HANDBOOK OF CASE LAW
ON THE INDIAN ACT

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March 1984

This research report was prepared under contract for the Research Branch, Corporate Policy, Department of Indian Affairs and Northern Development. The opinions expressed in this report are those of the authors and do not necessarily reflect the views or policies of the Department.

(On peut également obtenir une version française du même texte)

©Published under the authority of the
Hon. David E. Crombie, P.C., M.P.,
Minister of Indian Affairs and
Northern Development.
Ottawa, 1984.

QS-3342-000-EE-A2

Cette publication peut aussi être obtenue
en français sous le titre:

Manuel de jurisprudence
Loi sur les Indiens

NOTICE

All persons making reference to this Handbook are reminded that it has no parliamentary sanction. The Indian Act, the amendments thereto, and the accompanying explanation and case summaries as set out here are only for convenient reference. The original Act, legislative interpretations, and case law should be consulted for all purposes of interpretation and the application of law. The facts of a particular case are highly significant in determining the outcome of that case in a court of law. Persons comparing a situation facing them to a particular case cited in this Handbook are reminded of this fact and are cautioned accordingly. Because law is constantly changing, anyone wishing to rely on any cases cited in this Handbook should first determine whether those cases are still in good standing. This Handbook does not embody the policies nor does it attempt to set out the existing policies of the Department of Indian Affairs and Northern Development. The case law summarized in this Handbook is not meant to be exhaustive, and anyone using this Handbook is encouraged to consult legal counsel or engage in further research.

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INTRODUCTION

As an enactment of the Parliament of Canada, the Indian Act has widespread repercussions on the lives of Indians and on their socio-economic relationships with other Canadians. Because of the far-reaching effects of the Act, those who drafted the legislation had to use technical language and precise legal words and phases. Since the initial drafting and enactment by Parliament, various Canadian courts have interpreted certain words and phrases and applied these interpretations to situations presented to them. Court decisions are based on facts: if a fact situation is materially different from that of a previously decided case, then the court is not bound to follow the verdict or the reasoning in the earlier case.

The purpose of this Handbook is to inform Indian people, particularly Indian band councils, and the staff of the Department of Indian Affairs and Northern Development about the courts' direct interpretations of the provisions of the 1951 and the 1970 Indian Acts up to 1981. The Handbook is intended to facilitate band business by increasing general knowledge, understanding and familiarity with the Indian Act and by assisting band members and governments in evaluating and managing the various situations they face in dealing with band business.

By using the Handbook as a guide and by referring to the actual texts of the cases summarized and cited, readers can assess a situation in a preliminary way and determine whether the matter should be referred to legal counsel for further opinion and direction.

NOTE ON ORGANIZATION

The Handbook is set up in the following way: The text of the Indian Act (Revised Statutes of Canada 1970, chapter I-6, as amended by, Revised Statutes of Canada 1970 (2nd Supplement), chapter 10, and Statutes of Canada 1974-75-76, chapter 48) is shown in the left-hand column of the page. A simplified layman's explanation of each section is shown in the right-hand column opposite the appropriate section of the Act. The reported court decisions directly interpreting each section appear beneath each section (or subsection in the case of sections 2, 73 and 81). Because the 1951 Indian Act is basically the same as the 1970 Indian Act, court decisions based on both versions are included. Court decisions dealing with criminal matters, the Canadian Bill of Rights, or other human rights legislation are not included. Moreover, court decisions not directly related to the interpretation of section 88 are not included. For the reader's convenience, current regulations are cited opposite the applicable section of the Act in the column labelled EXPLANATION.

We have not included citations of proclamations respecting the exemption of certain Indian bands or Indian reserve lands from portions of the Act, citations of proclamations respecting the applicability of certain sections of the Act to certain Indian bands or Indian reserve lands, and citations of band regulations or band by-laws respecting revenue moneys. These citations may be found in Part 4 of the Canada Gazette.

A glossary of legal terms and a list of abbreviations are located prior to the index at the back of the Handbook.

The index is arranged in two parts: an ALPHABETICAL INDEX of cases and a SUBJECT INDEX; the former includes citations for reported judgments. Citations of any lower court decisions on a particular case are also provided in the alphabetical index.

Researchers interested in a particular subject area should consult the subject index. The case numbers listed after each subject heading refer to the cases listed numerically in the alphabetical index. Researchers interested in the judicial consideration of a particular section of the Indian Act should consult the applicable section of the Act in the body of the Handbook and review the synopses of cases listed there. The case number opposite each synopsis refers to the number assigned to the case in the alphabetical index, where the name of the case and its citation can be found. The alphabetical index also shows the section(s) of the Act under which a synopsis of a case can be found.

INDIAN ACT, Section 1, 2(1) "band"	EXPLANATION
CHAPTER I-6 An Act Respecting Indians SHORT TITLE 1. This Act may be cited as the Indian Act. R.S., c.149, s.1.	
INTERPRETATION 2.(1) In this Act	In this Act the following words have the meanings that are given to them in this section:
"band" means a body of Indians (a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after the 4th day of September, 1951, (b) for whose use and benefit in common, moneys are held by Her Majesty, or (c) declared by the Governor in Council to be a band for the purposes of this Act;	"band" means a group of Indians who share the use and benefit of reserve lands, or who share moneys held by the Department of Indian Affairs and Northern Development, or who the Department of Indian Affairs and Northern Development has said are a band; The question has arisen as to whether a band or a band council is a legal entity with the power to sue and to be sued and with the power to transact business in its own name. The following cases deal with this question. For cases dealing with the question of whether an Indian-owned company is an Indian, see subsection 2(1) "Indian".

COURT DECISIONS

Case 52. In Lazare v. St. Lawrence Seaway, a 1956 decision, the Quebec Superior Court refrained from deciding the question of whether or not a band can sue for a temporary injunction and for a declaration that certain Indian lands were not subject to expropriation.

Case 55. In Lindley v. Derrikson, a 1976 decision, the British Columbia Supreme Court decided that a band council had the status to commence an action for the recovery of possession of a parcel of reserve land. The Act must be read as granting an implied power to bring, or to defend, legal proceedings on behalf of the band without obtaining specific authority from the majority of the councillors.

Case 25. In Davey v. Isaac, a 1977 decision, the Supreme Court of Canada ruled that the Six Nations Indians are a "band" within the meaning of this subsection because moneys arising from a pre-Confederation sale of their lands are now held by the federal government for their use and benefit in common. Accordingly, an election under the Indian Act was binding on them. A permanent injunction prevented certain band members from returning to the hereditary system of government.

Case 65. In Mintuck v. Valley River Band, a 1977 decision, the Manitoba Court of Appeal was divided on whether a band is a suable entity. In any event, a band is capable of suing or being sued through its band council by means of an order designating individuals, likely members of the band council, to represent the band. Since the band had to pay money as damages for intimidation, unlawful interference with the Plaintiff's farming, and trespass, judgment was given with a right of execution limited to the assets of the band.

Case 66. In Mintuck v. Valley River Band, a 1977 decision, the Manitoba Queen's Bench refused to set aside a garnishment order issued by certain Indian members of a band and attaching to the general bank account of the band. Judgment was previously obtained against the defendants and all other members of the band.

Case 85. In R. v. Cochrane, a 1977 decision, the Manitoba County Court ruled that an Indian band, being neither a natural person nor a corporation, was not a legal "person" and, accordingly, could not be a postal employee or a postmaster. Instead, the band was considered to be a mail contractor.

Case 61. In Millbrook Indian Band v. N. Counties Residential Tenancies Bd., a 1978 decision, the Nova Scotia Supreme Court, Appellate Division, ruled that without the involvement of the Minister, any tenancy agreement entered into between a band and a non-Indian tenant of a trailer park located on reserve land is void and cannot be enforced against the band. There was no landlord and tenant relationship.

Case 48. In Kinookimaw Beach Association v. R., a 1979 decision, the Saskatchewan Court of Appeal ruled that even though all the shareholders of a corporation were Indians, that corporation was not an "Indian" or "an Indian Band" and, therefore, was not exempt from taxation.

Case 18. In Cache Creek Motors Ltd. v. Porter, a 1979 decision, the British Columbia County Court decided that in matters where the involvement of the Minister is not specifically set out, the Indian band is free to act on its own behalf, as in this case where it entered into a contract with the Plaintiff for providing school bus transportation for the children of the reserve. The band was properly named as a Defendant, together with certain individuals as representatives of that band, in an action arising out of a breach of that contract.

Case 79. In the Enoch Decision, a 1981 decision, the Alberta Court of Appeal stated that an "Indian" or an Indian "band" is not created by the process of incorporation. A corporation that has its registered office on an Indian reserve, in which all its shareholders are registered Indians residing on an Indian reserve and are members of an Indian band, is not an "Indian" by definition.

Case 46. In Johnson v. B.C. Hydro & Power, a 1981 decision, the British Columbia Supreme Court ruled that an Indian band has sufficient interest in reserve land to maintain a representative action for trespass and for a mandatory injunction directing the removal of certain power transmission lines. The action does not need to be brought by the Attorney General of Canada.

Case 23. In Children's Aid Society of Winnipeg v. Tom, a 1982 decision, the Manitoba Court of Appeal ruled that an Indian band is not a child-caring agency or a person who could apply under section 115 of the provincial Child Welfare Act to become the guardian of an Indian child.

Case 33. In Francis v. Can. L.R.B., a 1982 decision, the Supreme Court of Canada ruled that a band may be considered an employer as defined in the Canada Labour Code for purposes of a certification order under that Code, despite its lack of corporate status.

INDIAN ACT, Section 2(1) "child"	EXPLANATION
"child" includes a legally adopted Indian child;	"child" includes both natural Indian children and adopted Indian children;

COURT DECISIONS

Case 69. In Natural Parents v. Superintendant of Child Welfare, a 1975 decision, the Supreme Court of Canada ruled that an adoption order made pursuant to the provincial Adoption Act allowing non-Indian parents to adopt an Indian child is valid. This subsection specifically contemplates legal adoption, but the Act does not otherwise contain a procedure to be followed.

Case 70. In Nelson v. Children's Aid Society of Eastern Man., a 1975 decision, the Manitoba Court of Appeal stated that this subsection refers only to adoption of Indian children by Indians. Because the Act does not deal with adoption of Indian children by non-Indians, the provincial laws apply. An Indian child, made subject to a permanent order of custody under the Child Welfare Act or of adoption under the Adoption Act, will continue to have whatever rights any Indian child has under the Indian Act.

INDIAN ACT, Sections 2(1) "council of the band"	EXPLANATION
"council of the band" means (a) in the case of a band to which section 74 applies, the council established pursuant to that section, (b) in the case of a band to which section 74 does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;	"council of the band" means one of two kinds of band councils: either a council elected under the provisions of the Indian Act (sections 74 to 80 and the Indian Band Election Regulations enacted under section 76) or a council or chief chosen by what the Indian Act calls the custom of the band. All bands that do not have reserves have a "custom council" or chief, simply because the Indian Act provisions refer to reserves (in, for example, section 74(4)). As well, a number of bands with reserves have systems for selecting their band councils that are different from the system set out in the Indian Act. These systems are recognized as the "custom of the band". A system can be recognized as a custom of the band without being the traditional system used by the band for choosing leaders.

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Case 21. In Canatonquin v. Gabriel, a 1980 decision, the Federal Court of Appeal ruled that a custom band council had no authority when a council elected under section 74 existed. The Court had jurisdiction to hear a claim that the system of electing the band council was changed illegally, because the council of the band is a "federal board" within the meaning of the Federal Court Act.

Case 53. In Leonard v. Gottfriedson, a 1980 decision, the British Columbia Supreme Court emphasized that the chief and the councillors of an Indian band must be careful that they do not have a personal conflict of interest when it comes time to vote on a resolution put before that band council. If they do, that resolution will prove to be invalid. The band council does not have the power to consent individually to a resolution in writing - the provisions of the Indian Act must be strictly conformed with.

INDIAN ACT, Sections 2(1) "council of the band"	EXPLANATION
	Jurisdiction exists in the Federal Court for actions against any "Federal Board, Commission or other Tribunal". The question arose as to whether band councils come within these terms; if so, any Court action challenging a band council decision would have to take place in the Federal Court and not in the regular courts.

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Case 12. In Beauvais v. Delisle, a 1976 decision, the Federal Court of Canada, Trial Division, ruled that it did not have jurisdiction to issue an injunction against individual members of an Indian band council because section 18 of that Act provided for that extraordinary remedy to be issued against "any federal board, commission or other tribunal", not against individuals. Even if it possessed jurisdiction, it would not have granted the injunction because the applicant's affidavit was insufficient.

Case 55. In Lindley v. Derrikson, a 1976 decision, the British Columbia Supreme Court decided that the Band Council had the right to commence an action to recover possession of reserve land.

Case 77. In Pratt v. Sproxton, a 1977 decision, the Saskatchewan Queen's Bench ruled that it did not have jurisdiction to grant an interim injunction prohibiting the holding of a plebiscite on an Indian Reserve. Only the Federal Court has jurisdiction, because the band council, in exercising powers conferred by the Indian Act, is a "federal board, commission or other tribunal" within the meaning of the Federal Court Act.

Case 142. In Trotchie v. R., a 1978 decision, the Federal Court of Canada, Trial Division, ruled that a band council is a "federal board, commission or other tribunal" within the meaning of section 18 of the Federal Court Act. The jurisdiction of the Court against that band council must be derived from that section. Relief of damages for personal injuries received by an infant when she touched a high voltage power line on an Indian reserve is not covered by that section. Therefore, the Court could not order the band council to pay money to that infant.

Case 130. In Rider v. Ear, a 1979 decision, the Alberta Supreme Court, Trial Division, decided that an action for an interim injunction to stop the chief and the band council from carrying on any business on the grounds that a candidate nominated in an election was unlawfully struck off the ballot lies within the sole jurisdiction of the Federal Court, because an Indian band council exercising powers granted to it under the Indian Act is a "federal board, commission or other tribunal" within the meaning of section 18 of the Federal Court Act.

Case 33. In Francis v. Can. L.R.B., a 1982 decision, the Supreme Court of Canada ruled that the definition of an employer as "any person who employs one or more employees" under the Canada Labour Code may include an Indian band council for purposes of a certification order under that Code, despite its lack of corporate status. Subsection 74(1) deals with the creation of a statutory body, the council, selected by elections. Although this Act does not provide for incorporation of that body, under section 81 the council is given substantial legislative powers to enact by-laws that can be enforced only through the employment of staff. In this case, the council did in fact employ staff and pay them by cheques issued in its name. Under the Interpretation Act, "person" includes the plural form of "persons". The council, being a designated body of persons that is given a specific role under this Act, therefore comes within the definition of employer and can be certified as such.

INDIAN ACT, Section 2(1) "Department"	EXPLANATION
"Department" means the Department of Indian Affairs and Northern Development;	"Department" means the Department of Indian Affairs and Northern Development;

COURT DECISIONS

Case 74. In *Re Park Realty Ltd. and Mentuck*, a 1981 decision, the Manitoba County Court ruled that the Department of Indian Affairs and Northern Development, which had arranged for the housing of certain Indians and paid the rent until such time as those Indians were able to support themselves, was not a "tenant" within the meaning of the provincial *Landlord and Tenant Act*. The Department, then, did not need to be named a party to the proceedings brought by the landlord and owner of the houses for possession of those houses after the Indians who could support themselves refused to pay their rent.

INDIAN ACT, Section 2(1) "elector"	EXPLANATION
"elector" means a person who (a) is registered on a Band List, (b) is of the full age of twenty-one years, and (c) is not disqualified from voting at band elections;	"elector" means a person who is (a) on a Band List; (b) aged 21 or more; and (c) can vote in band elections (that is, he must usually live on the reserve); (See Indian Band Election Regulations, C.R.C., 1978, c. 952)

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 2(1) "estate"	EXPLANATION
"estate" includes real and personal property and any interest in land;	"estate" means everthing a person owns - land, leases, money, car, house, furniture, t.v., clothes and so on;

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 2(1) "Indian"	EXPLANATION
"Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;	"Indian" means a person whose name is on the membership lists kept by the Department of Indian Affairs and Northern Development or who is entitled to have his or her name on those lists; A question has arisen as to whether an Indian-owned company is an "Indian". The following cases answer it.

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Case 48. In Kinookimaw Beach Assoc. v. R., a 1979 decision, the Saskatchewan Court of Appeal ruled that even though all the shareholders of a corporation were Indians, that corporation is not an "Indian" and, therefore, is not exempt from taxation under section 87 of this Act.

Case 148. In Western Industrial Contractors Ltd. v. Sarcee Developments Ltd., a 1979 decision, the Alberta Supreme Court, Appellate Division, decided that a development company composed wholly of members of an Indian band is not an "Indian". A builder's lien may be filed against that company's leasehold interest in certain reserve lands that had previously been conditionally surrendered to the Crown for the purpose of leasing it to that company.

Case 79. In Re Enoch Decision, a 1981 decision, the Alberta Court of Appeal stated that the provisions of the Indian Act and the B.N.A. Act, 1867 do not serve to create an "Indian" or an Indian "band" by process of Incorporation. A corporation that has its registered office on an Indian reserve, in which all its shareholders are registered Indians residing on an Indian reserve and are members of an Indian band, is not an "Indian" by definition. It does not matter where the registered office of the corporation is located or how many of the shareholders are reserve Indians - it cannot be regarded as an "Indian".

Case 111. In R. v. Pritchard, a 1972 decision, the Saskatchewan District Court said that this section is evidence of Parliament's intention to restrict the meaning of the term "Indian" as used in this Act and, by inference, in such provincial Acts as the Saskatchewan Game Act. The word "Indian" refers only to a certain class of people of Indian descent, but does not include all the descendants of the aboriginal inhabitants of Canada.

Case 101. In R. v. Laprise, a 1978 decision, the Saskatchewan Court of Appeal ruled that the term "Indian" as used in the provincial Game Act is the same as that used in the Indian Act. Both mean "treaty" Indians or, in other words, only those Indians entitled to be registered.

Case 15. In Boadway v. M.N.R., a 1980 decision, the Tax Review Board decided that wages earned by an Indian woman while she was employed as a librarian on a reserve after her marriage to a non-Indian was not exempt from income tax. The fact that she remained, for administrative purposes, on the list as a registered Indian did not preserve her legal status as an Indian, which she had previously lost on her marriage to a non-Indian.

INDIAN ACT, Section 2(1) "Indian moneys"	EXPLANATION
"Indian moneys" means all moneys collected, received or held by Her Majesty for the use and benefit of Indians or bands;	"Indian moneys" means any money collected or held by the federal government on behalf of individual Indians or Indian bands;

COURT DECISIONS

Case 79. In Re Enoch Decision, a 1981 decision, the Alberta Court of Appeal ruled that where legal title remains with the Crown, and the reserve land is only leased to another person or company, there is no absolute surrender of the rights and interests of the band, and the lands remain a "reserve". The band retains the rights of a landlord through the agency of the Minister and the right to the future enjoyment of the land. The rents reserved are "Indian moneys", and the band has a direct interest in their collection and benefit.

INDIAN ACT, Section 2(1) "intoxicant"	EXPLANATION
"intoxicant" includes alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption that are intoxicating;	"intoxicant" means anything that people can drink that will make them drunk; it includes such things as methylated spirits and vanilla extract;

COURT DECISIONS

Case 102. In R. v. Lonethunder, a 1979 decision, the Saskatchewan Provincial Court ruled that Lysol spray is an intoxicant within the meaning of this subsection. It is a drinkable liquid or preparation or mixture that is both capable of human consumption and intoxicating.

INDIAN ACT, Section 2(1) "member of a band"	EXPLANATION
"member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List;	"member of a band" is a person whose name is on the band list or who has a right to have his name on the band list. It does not include a non-status Indian living on a reserve;

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 2(1) "mentally incompetent Indian"	EXPLANATION
"mentally incompetent Indian" means an Indian who, pursuant to the laws of the province in which he resides, has been found to be mentally defective or incompetent for the purposes of any laws of that province providing for the administration of estates of mentally defective or incompetent persons;	"mentally incompetent Indian" means an Indian who, because of the state of his mind, cannot look after his own business according to the provincial law concerning the property of mentally incompetent people;

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 2(1) "Minister"	EXPLANATION
"Minister" means the Minister of Indian Affairs and Northern Development;	"Minister" means the Minister of Indian Affairs and Northern Development;

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 2(1) "registered"	EXPLANATION
"registered" means registered as an Indian in the Indian Register;	"registered" means registered as an Indian in the Indian Register (as listed by the Department of Indian Affairs and Northern Development in Ottawa);

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 2(1) "Registrar"	EXPLANATION
"Registrar" means the officer of the Department who is in charge of the Indian Register;	The registrar is an official in the Department of Indian Affairs and Northern Development who is responsible for maintaining the membership lists. The registrar must follow the membership rules set out in the Indian Act;

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 2(1) "reserve"	EXPLANATION
"reserve" means a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band;	"reserve" means a piece of land legally held by the federal government, but set aside for the use and benefit of a band of Indians; See also section 36 which expands the meaning of this term. The question of whether surrendered lands continue to be "reserve lands" has arisen in the following cases:

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Case 39. In Grammount Motel Ltd. v. Mann, a 1977 decision, the Quebec Court of Appeal ruled that a pre-Confederation reserve created within the boundary of a municipality already in existence and later surrendered for the purpose of leasing it to a non-Indian continues to be part of the municipality and the province within whose limits it is situated. The municipality sees a lessening of its powers only on the portion of its territory having become an Indian reserve, but only where the Indian Act so stipulates.

Case 140. In Surrey v. Peace Arch Enterprises Ltd., a 1970 decision, the British Columbia Court of Appeal ruled that reserve lands surrendered "in trust" to the Crown for the purpose of leasing them to a company continue to be "lands reserved for the Indians" within subsection 92(24) of the B.N.A. Act. Since it was not yet in existence, the definition of "reserve" under the Indian Act is not to be used to interpret the B.N.A. Act. "In trust" means in trust for the Indians who surrendered such lands. In obiter dictum, the Court went on to state that if an absolute surrender was made by the Indians under the Indian Act, and this surrender was followed by a conveyance from the Crown to a purchaser, such lands would cease to be a reserve under the provisions of the Indian Act and the B.N.A. Act.

Case 72. In Palm Dairies Ltd. v. R., a 1978 decision, the Federal Court of Canada, Trial Division, ruled that it did not have the authority to order a builder's lien be registered in the Surrendered Lands Register against the leasehold interest of a company in lands that were surrendered to the Crown and then leased to that company for a 75-year term. The Plaintiff may, however, have a remedy in another jurisdiction.

Case 148. In Western Industrial Contractors Ltd. v. Sarcee Developments Ltd., a 1979 decision, the Alberta Supreme Court, Appellate Division, decided that reserve lands conditionally surrendered to the Crown, which then leased them to a development company composed entirely of members of that band, remain "lands reserved for the Indians" within subsection 91(24) of the B.N.A. Act, 1867. A builder's lien may be filed only against the leasehold interest of the company, and may not affect the band's beneficial or reversionary interest. If such lands are unpatented Crown lands, the Registrar of the provincial Land Titles Office shall record the lien in the day book.

Case 42. In Hay River v. R., a 1979 decision, the Federal Court of Canada, Trial Division, ruled that an Indian reserve was lawfully created by Order in Council of the federal Crown in fulfillment of its obligations under Treaty #8. The Crown's authority was based on royal prerogative, not on statute. The question of the suitability of the lands selected and of whether the terms of the Treaty were complied with cannot be argued by a municipality within whose limits the lands are located, especially where it held no substantial interest in the lands concerned.

Case 118. In R. v. Smith, a 1980 decision, the Federal Court of Appeal decided that where pre-Confederation reserve lands were surrendered after Confederation to the federal Crown in trust for sale, that surrender served to extinguish the band's right to possession. Their interest was now in the sale of the land and the application of the proceeds for their benefit. They could not recover possession. Where the lands were never sold, the Court stated that the lands continue to be "lands reserved for the Indians" until sold or otherwise disposed of within the meaning of subsection 91(24) of the British North America Act, 1867, and therefore passed at Confederation to the jurisdiction of the federal government. The federal Crown, then, can initiate and maintain an action in its own right for possession of these lands. The limitations with respect to obtaining ownership of land by "adverse possession" do not apply to Indian reserve lands or to lands that have been surrendered to the Crown in trust for sale while they remain unsold.

Case 79. In Re Enoch Decision, a 1981 decision, the Alberta Court of Appeal gave its opinions with respect to a number of questions posed by the Lieutenant Governor in Council. These questions arose from a proposal to surrender certain post-Confederation reserve lands either absolutely, qualifiedly, conditionally or unconditionally under this Act to permit urban development. The Court had to look at how provincial law would apply to the lands following surrender. Out of necessity, it restricted its opinion to provincial statutes of general application that affected the use and enjoyment of land or an interest in it. (Section 88 is not related to surrendered lands.) The Court first looked at the nature of reserves and then determined that the legal title to reserve lands was vested in the provincial Crown, subject to the rights of the Indians to the use and enjoyment of those lands. It also found that the federal Crown had the authority to dispose of any interest in the reserve lands surrendered by an Indian band. The Court then looked at the effects of surrendering reserve lands. It decided that once reserve land was surrendered absolutely and granted in fee simple to another person (whether that person was another Indian, a corporation of which the shareholders were Indians, a corporation with its head office on the reserve, or a non-Indian), the land ceased to be a reserve under this Act and under the B.N.A. Act, and the Indians no longer had an interest in those lands. Therefore, those lands would be subject to all the general laws of the province. If, however, the fee simple in the surrendered lands was held in trust, in perpetuity, for the benefit of the band and its members, the lands remained a reserve and the Indians had a right to the future enjoyment of those lands. Because provincial laws relating to the use of reserve lands were inapplicable to Indian reserve lands, the Court found that provincial laws that would impair the right to future enjoyment of those lands surrendered "in trust" would not be applicable to those lands. The Court went on to state that if, according to the terms of the surrender, the federal Crown retained legal title to the surrendered lands and leased them in perpetuity or for a specified term of years, the band retained the rights of a landlord and a reversionary interest in those lands. Therefore, the lands remained reserve lands, and provincial laws that would impair the band's right to use those lands in the future would not be applicable. In any event, the federal Crown was responsible for the control and management of the reserve lands until final disposition.

INDIAN ACT, Section 2(1) "superintendent"	EXPLANATION
"superintendent" includes a commissioner, regional supervisor, Indian superintendent, assistant Indian superintendent and any other person declared by the Minister to be a superintendent for the purposes of this Act, and with reference to a band or a reserve, means the superintendent for that band or reserve;	"superintendent" includes a commissioner, regional supervisor, Indian superintendent, assistant Indian superintendent and any other person the Minister says is a superintendent;

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 2(1) "surrendered lands"	EXPLANATION
"surrendered lands" means a reserve or part of a reserve or any interest therein, the legal title to which remains vested in Her Majesty, that has been released or surrendered by the band for whose use and benefit it was set apart.	"surrendered lands" means any piece of reserve land that has been surrendered by a band and for which the federal government still has the power of management or sale. Refer to subsection 2(1) "reserves" for cases on the question of whether surrendered lands still form part of a reserve.

COURT DECISIONS

Case 140. In Surrey v. Peace Arch Enterprises Ltd., a 1970 decision, the British Columbia Court of Appeal decided that where an Indian Band surrendered certain reserve lands, which also came within the boundaries of a municipality, in trust to the Crown for the purpose of leasing them to a development company, such surrender was not final and complete, but merely conditional. The lands continued to be "lands reserved for the Indians" within subsection 91(24) of the B.N.A. Act. "In trust" means in trust for the Indians who surrendered those lands. The municipal by-laws and regulations (enacted pursuant to the provincial Health Act) providing for zoning and specifying building, water service, sewerage disposal and other requirements with respect to the use of the land were not applicable to those lands. In obiter dictum, the Court went on to state that if an absolute surrender was made by the Indians under the Indian Act, and this surrender was followed by a transfer from the Crown to a purchaser, such lands would cease to be a reserve under the provisions of the Indian Act and the B.N.A. Act.

Case 148. In Western Industrial Contractors Ltd. v. Sarcee Developments Ltd., a 1979 decision, the Alberta Supreme Court, Appellate Division, ruled that a builder's lien may be filed only against the leasehold interest of a development company (which was composed entirely of members of a band) in reserve lands that were conditionally surrendered to the Crown for leasing to that company. The lien would not, then, affect the band's reversionary interest in those lands.

INDIAN ACT, Section 2(2),(3)	EXPLANATION
(2) The expression "band" with reference to a reserve or surrendered lands means the band for whose use and benefit the reserve or the surrendered lands were set apart.	When the word "band" is used in connection with a reserve or surrendered lands, it means the band for whose use and benefit the reserve or surrendered lands were set apart.
(3) Unless the context otherwise requires or this Act otherwise provides	
(a) a power conferred upon a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the electors of the band, and	Generally speaking, when a band is given the power to do something, it cannot do it unless the majority of the electors of the band have agreed;
(b) a power conferred upon the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened. R.S., c.149, s.2; 1966-67, c.25, s.40.	Generally speaking, when a band council is given the power to do something, it cannot do it unless the majority of the band councillors have agreed to it at a properly called band council meeting.

COURT DECISIONS

Case 55. In Lindley v. Derrickson, a 1976 decision, the British Columbia Supreme Court ruled that under this subsection, the band council had the status to commence an action for possession of reserve land. The Act must be read as granting an implied power to bring, or to defend, legal proceedings on behalf of the Band without obtaining specific authority from the majority of the councillors.

Case 53. In Leonard v. Gottfriedson, a 1980 decision, the British Columbia Supreme Court stated that the provisions of paragraph 2(3)(b) are mandatory. A transfer of land to an Indian by means of a resolution signed by the chief and one of the three councillors was not valid because that resolution was not formally passed and a formal meeting was not held. There is no statutory or similar authority allowing the exercise of power by the band council by individual consent to a resolution in writing.

INDIAN ACT, Section 3	EXPLANATION
ADMINISTRATION	
3. (1) This Act shall be administered by the Minister of Indian Affairs and Northern Development, who shall be the superintendent general of Indian affairs.	This Act shall be carried out by the Minister of Indian Affairs and Northern Development who is also the superintendent general of Indian Affairs.
(2) The Minister may authorize the Deputy Minister of Indian Affairs and Northern Development or the chief officer in charge of the branch of the Department relating to Indian affairs to perform and exercise any of the duties, powers and functions that may be or are required to be performed or exercised by the Minister under this Act or any other Act of the Parliament of Canada relating to Indian affairs. R.S., c.149, s.3; 1966-67, c.25, s.40.	The Minister can give the Deputy Minister or the head of the Indian Affairs sector authority to exercise the Minister's powers under this Act.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 4	EXPLANATION
APPLICATION OF ACT	
4. (1) A reference in this Act to an Indian does not include any person of the race of aborigines commonly referred to as Eskimos.	Inuit do not come under the Indian Act.
(2) The Governor in Council may by proclamation declare that this Act or any portion thereof, except sections 37 to 41, shall not apply to (a) any Indians or any group or band of Indians, or (b) any reserve or any surrendered lands or any part thereof, and may by proclamation revoke any such declaration.	The government can make a proclamation saying that the Indian Act or any part of it does not apply to some Indians or some bands or to a reserve or part of a reserve. However, it cannot say that sections 37 to 41 (the surrender sections) do not apply. The Government can also cancel any proclamation it has made. While this section refers to a "proclamation", the exact method used is an order in council, which is a recorded decision of the federal cabinet that will normally be printed in the Canada Gazette. On July 24, 1980, the Minister of Indian Affairs and Northern Development announced that the government, when requested to do so by a band council, would use its power under section 4(2) to suspend the application of sections 12(1)(b) and 12(1)(a)(iv), or either of them, to the members of that band.
(3) Sections 114 to 123 and, unless the Minister otherwise orders, sections 42 to 52 do not apply to or in respect of any Indian who does not ordinarily reside on a reserve or on lands belonging to Her Majesty in right of Canada or a province. R.S., c.149, s.4; 1956, c.40, s.1.	The parts of the Indian Act concerning the estates of Indians who have died (sections 42 to 52) and education (sections 114 to 123) normally will not apply to Indians who do not usually live on reserve lands or Crown lands.

Case 2. In A.-G. of Canada v. Canard, a 1975 decision, the Supreme Court of Canada considered an Indian living on a reserve, except for a period in the summer when he was employed and lived on a farm outside the reserve, to "ordinarily reside" on the reserve within the meaning of this subsection. The provisions of this Act regarding estates apply to that Indian after he was killed while working on that farm.

INDIAN ACT, Section 5	EXPLANATION
DEFINITION AND REGISTRATION OF INDIANS	
5. An Indian Register shall be maintained in the Department, which shall consist of Band Lists and General Lists and in which shall be recorded the name of every person who is entitled to be registered as an Indian. R.S., c.149, s.5.	The Department of Indian Affairs and Northern Development keeps a list of every person who is a status Indian. There is a list for each band (the band lists). There is also a list of status Indians who do not belong to any band (the general list). Status Indian children who have been adopted by non-status persons retain their status and are listed in confidential lists for each band (and for the general list).

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 6	EXPLANATION
6. The name of every person who is a member of a band and is entitled to be registered shall be entered in the Band List for that band, and the name of every person who is not a member of a band and is entitled to be registered shall be entered in a General List. R.S., c.149, s.6.	The names of status Indians who are band members shall be recorded on the appropriate band list; those who do not belong to a band shall have their names entered on the general list.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 7	EXPLANATION
7. (1) The Registrar may at any time add to or delete from a Band List or a General List the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List. (2) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom. R.S., c.149, s.7.	The Registrar is responsible for keeping the lists up to date by adding the names of people who are entitled to be registered as status Indians and removing the names of people who lose Indian status. The following two cases involve the same individual. The decisions are not in conflict, but show that a decision by the Registrar not to add a name can be challenged only if the proper legal procedure is followed.

COURT DECISIONS

Case 8. In *Bay* v. *The Queen*, a 1974 decision, the Federal Court of Appeal ruled that the decision of the Registrar not to add a name to a membership list was not a decision that could be appealed to the Federal Court of Appeal under section 28 of the *Federal Court Act*.

Case 9. In *Bay* v. *Registrar*, a 1976 decision, the Federal Court, Trial Division, ruled that the Registrar should add a name to the register, since the Court decided that the person was entitled to be registered. The Registrar had earlier refused to add the person's name to the register.

INDIAN ACT, Sections 8, 9

8. The band lists in existence in the Department on the 4th day of September 1951 shall constitute the Indian Register, and the applicable lists shall be posted in a conspicuous place in the superintendent's office that serves the band or persons to whom the List relates and in all other places where band notices are ordinarily displayed. R.S., c.149, s.8.

9. (1) Within six months after a list has been posted in accordance with section 8 or within three months after the name of a person has been added to or deleted from a Band List or a General List pursuant to section 7

(a) in the case of a Band List, the council of the band, any ten electors of the band, or any three electors if there are less than ten electors in the band,

(b) in the case of a posted portion of a General List, any adult person whose name appears on that posted portion, and

(c) the person whose name was included in or omitted from the List referred to in section 8, or whose name was added to or deleted from a Band List or a General List,

may, by notice in writing to the Registrar, containing a brief statement of the grounds therefor, protest the inclusion, omission, addition, or deletion, as the case may be, of the name of that person, and the onus of establishing those grounds lies on the person making the protest.

EXPLANATION

The Indian Act was rewritten in 1951. One of the most important changes in the new Act concerned membership records, which had been badly kept in many parts of Canada. The government decided to revise all the membership lists. The process of revision is described in sections 8 and 9 and involved the following steps:

(1) membership lists were made public,
(2) protests could be made, within six months of the lists being posted, about the inclusion or exclusion of individuals,
(3) the Registrar would decide whether the protest was valid, and
(4) the Registrar's decision could be appealed to the courts.

There are eleven court decisions about protests on the new lists. As the process of revising the lists was completed in the 1950s, the cases are not of current interest and will not be described.

Section 9 has one current role. If the Registrar, using his power under section 7, adds or deletes a name from the membership list, it is possible to appeal that decision under section 9(3).

INDIAN ACT, Section 9	EXPLANATION
(2) Where a protest is made to the Registrar under this section he shall cause an investigation to be made into the matter and shall render a decision, and subject to a reference under subsection (3), the decision of the Registrar is final and conclusive.	
(3) Within three months from the date of a decision of the Registrar under this section,	
(a) the council of the band affected by the Registrar's decision, or	
(b) the person by or in respect of whom the protest was made,	
may, by notice in writing, request the Registrar to refer the decision to a judge for review, and thereupon the Registar shall refer the decision, together with all material considered by the Registrar in making his decision,	
(c) in the Province of Prince Edward Island, to a judge of the Supreme Court,	
(d) in the Province of Quebec, to a judge of the Superior Court for the district in which the band is situated or in which the person in respect of whom the protest was made resides, or for such other district as the Minister may designate, or	

(e) in any other province, to a judge of the county or district court of the county or district in which the band is situated or in which the person in respect of whom the protest was made resides, or of such other county or district as the Minister may designate.

(4) The judge of the Supreme Court, Superior Court, county or district court, as the case may be, shall inquire into the correctness of the Registrar's decision, and for such purposes may exercise all the powers of a commissioner under Part I of the Inquiries Act; the judge shall decide whether the person in respect of whom the protest was made is, in accordance with this Act, entitled or not entitled, as the case may be, to have his name included in the Indian Register, and the decision of the judge is final and conclusive.

(5) Not more than one reference of a Registrar's decision in respect of a protest may be made to a judge under this section.

(6) Where a decision of the Registrar has been referred to a judge for review under this section, the burden of establishing that the decision of the Registrar is erroneous is on the person who requested that the decision be so referred. R.S., c. I-6, s.9; 1974-75-76, c.48, s.25.

Case 31. In Re Findlay, a 1976 decision, the British Columbia County Court decided that there was sufficient compliance with section 9(1) if the notice of protest was submitted within the required three-month period and the statement of the grounds for the protest was made later (in a situation where the persons affected were aware of the reasons for the protest).

Case 63. In Minister of I.A.N.D. v. Ranville, a 1982 decision, the Supreme Court of Canada ruled that there could be no appeal from a decision of a judge under section 9(3) and (4) on a protest.

INDIAN ACT, Section 10	EXPLANATION
10. Where the name of a male person is included in, omitted from, added to or deleted from a Band List or a General List, the names of his wife and his minor children shall also be included, omitted, added or deleted, as the case may be. R.S., c.149, s.10.	Where a man's name is added to or removed from a band list, the name of his wife and minor children shall also be added or removed.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Sections 11, 12

11. (1) Subject to section 12, a person is entitled to be registered if that person

(a) on the 26th day of May 1874 was, for the purposes of An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands, being chapter 42 of the Statutes of Canada, 1868, as amended by section 6 of chapter 6 of the Statutes of Canada, 1869, and section 8 of chapter 21 of the Statutes of Canada, 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada;

(b) is a member of a band
(i) for whose use and benefit, in common, lands have been set apart or since the 26th day of May 1874, have been agreed by treaty to be set apart, or
(ii) that has been declared by the Governor in Council to be a band for the purposes of this Act;

(c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b);

(d) is the legitimate child of
(i) a male person described in paragraph (a) or (b), or
(ii) a person described in paragraph (c);

EXPLANATION

Sections 11 and 12 are the main sections on membership. They deal with three matters: (a) the establishment of bands, (b) descent, and (c) exclusion from membership.

(a) Section 11(1)(a) and (b) describe the categories of bands recognized by the Indian Act: (i) bands recognized under federal legislation of 1874, (ii) bands with reserves, (iii) bands with treaties promising reserves, and (iv) bands declared by the Governor in Council (the federal government) to be bands. Individuals who are members of these bands when the bands were originally recognized by the government are status Indians.

(b) Sections 11(1)(d), (e), (f) and 11(2) deal with changes in band membership over time. They provide (i) that a non-status woman who marries a status Indian man gains Indian status, (ii) that the legitimate children of a status Indian man have Indian status, and (iii) that the illegitimate children of a status Indian woman have Indian status (subject to protest under section 12(2)).

(c) Section 12 deals with exclusions from membership. Indian status can be lost (i) by taking half-breed land or scrip, (ii) enfranchisement (the voluntary ending of Indian status), (iii) by the "double mother" rule, which says that a person whose mother and father's mother both gained Indian status by marriage will lose status at the age of 21 (this operates only when the parent's marriage occurred after September 4, 1951), (iv) by an Indian woman marrying a non-status man, and (v) by a protest to the status of the illegitimate child of a status Indian woman being upheld by the Registrar on the basis that the father was not a status Indian.

INDIAN ACT, Sections 11, 12

(e) is the illegitimate child of a female person described in paragraph (a), (b) or (d); or

(f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e).

(2) Paragraph (1)(e) applies only to persons born after the 13th day of August 1956. R.S., c.149, s.11; 1956, c.40, s.3.

12. (1) The following persons are not entitled to be registered, namely,

(a) a person who
  (i) has received or has been allotted half-breed lands or money scrip,
  (ii) is a descendant of a person described in subparagraph (i),
  (iii) is enfranchised, or
  (iv) is a person born of a marriage entered into after the 4th day of September 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)(a), (b) or (d) or entitled to be registered by virtue of paragraph 11(1)(e),

unless, being a woman, that person is the wife or widow of a person described in Section 11, and

EXPLANATION

To be entitled to be registered as a status Indian, an individual must be descended from a member of a recognized Indian band, must fit into the descent rules and must not be excluded by any of the provisions of section 12. A person who can prove these three things can be registered as a status Indian even though the person was not included in the revised band lists of 1951 (described in sections 8 and 9; see case 8).

There are a small number of court cases on parts of sections 11 and 12.

(b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11.

(2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) may be protested at any time within twelve months after the addition, and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph.

(3) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect.

(4) Subparagraphs (1)(a)(i) and (ii) do not apply to a person who

(a) pursuant to this Act is registered as an Indian on the 13th day of August 1958, or

(b) is a descendant of a person described in paragraph (a) of this subsection.

(5) Subsection (2) applies only to persons born after the 13th day of August 1956. R.S., c.149, s.12; 1956, c.40, ss.3,4; 1958, c.19, s.1.

Section 11(1)(b)
Case 151. In Re Wilson, a 1954 decision, the Alberta District Court ruled that when an individual's name appeared on the original treaty pay lists that fact established his band membership. The later removal of the person's name from the lists in the 1940s had no legal effect.

Section 11(1)(c)
Case 27. In Re Derocher, a 1956 decision, the Saskatchewan District Court ruled that the illegitimate son of a status Indian man and a non-status woman was a "direct descendant in the male line" of a status Indian male within section 11(1)(c).

Cases 35, 58. In Re Froman, a 1973 decision, the Ontario County Court, and in Re Martin and Chapman, a 1979 decision, the Federal Court, Trial Division, ruled that "direct descendant" in section 11(1)(c) was limited to legitimate children.

Case 69. In Natural Parents v. Superintendent of Child Welfare, a 1975 decision, the Supreme Court of Canada ruled that the adoption of a status Indian child under provincial adoption laws did not alter the status of the child.

Section 12(1)(a)(iv)
Cases 37, 71. In Re Gaisson, a 1979 decision, and in Re O'Bomsawin, a 1980 decision, the Quebec Superior Court in two separate cases upheld section 12(1)(a)(iv) against arguments that its application affected acquired rights or went against the assumption against retroactive application of legislation.

Case 44. In Re Jock, a 1980 decision, the Ontario County Court ruled that section 12(1)(a)(iv) would not apply to the situation where a woman member of the St. Regis Band married a member of the St. Regis Band immediately across the border in the United States. Under the Act, such a wife would not have been intended to be treated as a non-member of the Canadian band in her own right because the two communities formed one tribal group, and the practice in the communities was not to discriminate in concepts of membership between the two groups. Accordingly, the child of the marriage was not deprived of membership by the application of section 12(1)(a)(iv).

Section 12(1)(b)
Case 3. In A.- G. of Canada v. Lavell; Isaac v. Bedard, a 1973 decision, the Supreme Court of Canada ruled that section 12(1)(b) did not violate the Canadian Bill of Rights. This meant that the section continued to be in force.

Case 26. In Lovelace, a 1981 decision, the Human Rights Committee of the United Nations ruled that Canada was in breach of its international law obligations under the International Covenant on Civil and Political Rights for denying a woman who had lost status because of 12(1)(b) and had subsequently separated from her non-Indian husband the right to return to and live in the Indian reserve community in which she had been raised. The decision does not alter Canadian law and section 12(1)(b) continues to be in force.

Section 12(2)
Case 151. In Re Wilson, a 1954 decision, the Alberta District Court ruled that the evidence of an individual as to the identity of that person's father is completely valueless.

Case 67. In Re Moses, a 1962 decision, the Ontario County Court ruled that the statutory declaration of a mother that the father of her illegitimate child did not have Indian status was sufficient proof of non-Indian paternity. The identity of the father was not disclosed.

INDIAN ACT, Section 13	EXPLANATION
13. Subject to the approval of the Minister and, if the Minister so directs, to the consent of the admitting band,	The Minister can:
(a) a person whose name appears on a General List may be admitted into membership of a band with the consent of the council of the band, and	(a) put the name of a person who is on the general list on a band list with the band council's consent, and
(b) a member of a band may be admitted into membership of another band with the consent of the council of the latter band. 1956, c.40, s.5.	(b) put the name of a band member on another band list with the consent of the band council of the band he joins.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 14	EXPLANATION
14. A woman who is a member of a band ceases to be a member of that band if she marries a person who is not a member of that band, but if she marries a member of another band, she thereupon becomes a member of the band of which her husband is a member. R.S., c.149, s.14.	A woman ceases to be a member of her band and becomes a member of her husband's band when she marries a member of another band.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 15	EXPLANATION
15. (1) Subject to subsection (2), an Indian who becomes enfranchised or who otherwise ceases to be a member of a band is entitled to receive from Her Majesty	When an Indian becomes enfranchised, or loses his status in some other way, he or she has the right to:
(a) one per capita share of the capital and revenue moneys held by Her Majesty on behalf of the band, and	(a) one per capita share of all moneys held by the Department of Indian Affairs and Northern Development for the band, and
(b) an amount equal to the amount that in the opinion of the Minister he would have received during the next succeeding twenty years under any treaty then in existence between the band and Her Majesty if he had continued to be a member of the band.	(b) if he has the right to treaty money, 20 years' worth of treaty money in a lump sum. The Minister decides the amount of the lump sum payment.
(2) A person is not entitled to receive any amount under subsection (1)	A person does not have the right to be paid anything under this section if he lost his status because of a protest under section 9 or because his mother and father's mother were non-status Indians.
(a) if his name was removed from the Indian register pursuant to a protest made under section 9, or	
(b) if he is not entitled to be a member of a band by reason of the application of paragraph 11(1)(e) or subparagraph 12(1)(a)(iv).	

INDIAN ACT, Section 15	EXPLANATION
(3) Where by virtue of this section moneys are payable to a person who is under the age of twenty-one, the Minister may	If the money is to be paid to a person who is under 21 years of age, then the Minister can:
(a) pay the moneys to the parent, guardian or other person having the custody of that person or the public trustee, public administrator or other like official for the province in which that person resides, or	(a) pay the money to the person's parent or guardian or the provincial public trustee, or
(b) cause payment of the moneys to be withheld until that person reaches the age of twenty-one.	(b) hold the money until the person turns 21.
(4) Where the name of a person is removed from the Indian Register and he is not entitled to any payment under subsection (1), the Minister shall, if he considers it equitable to do so, authorize payment, out of moneys appropriated by Parliament, of such compensation as the Minister may determine for any permanent improvements made by that person on lands in a reserve.	When a person loses status and does not have the right to the payment under this section (subsection (1)), the Minister can, if he thinks it fair, pay him for any buildings, fences and so on that he may have put up on the land on the reserve. The money for this comes out of the government's funds, not the band's.

INDIAN ACT, Section 15	EXPLANATION
(5) Where, prior to the 4th day of September 1951, any woman became entitled, under section 14 of the Indian Act, chapter 98 of the Revised Statutes of Canada, 1927, or any prior provisions to the like effect, to share in the distribution of annuities, interest moneys or rents, the Minister may, in lieu thereof, pay to such woman out of the moneys of the band an amount equal to ten times the average annual amounts of such payments made to her during the ten years last preceding or, if they were paid for less than ten years, during the years they were paid. R.S., c.149, s.15; 1956, c.40, s.6.	In the past a woman who lost status by marrying a non-status man could become a "red ticket holder". While she would no longer have Indian status, she would still receive treaty annuity payments or other payments. This section allows the Minister to end this arrangement by paying a lump sum calculated in such a way that it should be equal to what the woman would receive over ten years.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 16	EXPLANATION
16. (1) Section 15 does not apply to a person who ceases to be a member of one band by reason of his becoming a member of another band, but, subject to subsection (3), there shall be transferred to the credit of the latter band the amount to which that person would, but for this section, have been entitled under section 15.	If a person is no longer a member of a band because he has joined another band, then the money he has the right to under Section 15 shall be transferred to the new band. This does not happen if he is under 21. In that case, the money is paid to his parent or guardian or the public trustee or held by the Department of Indian Affairs and Northern Development until he turns 21.
(2) A person who ceases to be a member of one band by reason of his becoming a member of another band is not entitled to any interest in the lands or moneys held by Her Majesty on behalf of the former band, but he is entitled to the same interest in common in lands and moneys held by Her Majesty on behalf of the latter band as other members of that band.	When a person transfers to another band he does not have the right to any of the lands or moneys of his old band, but he has the right to the same share in the lands and moneys of his new band as the other members of his new band.
(3) Where a woman who is a member of one band becomes a member of another band by reason of marriage, and the per capita share of the capital and revenue moneys held by Her Majesty on behalf of the first-mentioned band is greater than the per capita share of such moneys so held for the second-mentioned band, there shall be transferred to the credit of the second-mentioned band an amount equal to the per capita share held for that band, and the remainder of the money to which the woman would, but for this section, have been entitled under section	When a status Indian woman marries an Indian man from a different band and the per capita share of the moneys of her band is greater than a per capita share of the moneys of her husband's band, then the part of her per capita share that exceeds his per capita share is not paid to her husband's band but to the woman.

INDIAN ACT, Section 16	EXPLANATION
15 shall be paid to her in such manner and at such times as the Minister may determine. R.S., c.149, s.16.	

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 17	EXPLANATION
17. (1) The Minister may, whenever he considers it desirable,	
(a) constitute new bands and establish Band Lists with respect thereto from existing Band Lists or General Lists, or both,	The Minister can, when he thinks it would be a good idea, establish new bands.
(b) amalgamate bands that, by a vote of a majority of their electors, request to be amalgamated, and	The Minister can also unite bands that by a majority vote of their electors ask to be amalgamated.
(c) where a band has applied for enfranchisement, remove any name from the Band List and add it to the General List.	When a whole band has applied to be enfranchised, the Minister can take any name from the band list and add it to the general list, which would mean that the person would not become enfranchised when the rest of the band did.
(2) Where pursuant to subsection (1) a new band has been established from an existing band or any part thereof, such portion of the reserve lands and funds of the existing band as the Minister determines shall be held for the use and benefit of the new band.	When the Minister makes a new band or bands by splitting a band, the lands and funds of the existing band can be divided in whatever way the Minister decides to divide them.
(3) No protest may be made under section 9 in respect of the deletion from or addition to a list consequent upon the exercise by the Minister of any of his powers under subsection (1). R.S., c.149, s.17; 1956, c.40, s.7.	No protest under section 9 can be made against the membership of a new band list constituted by the Minister under this section.

Case 1. In Afton Band of Indians v. A.- G. of Nova Scotia, a 1978 decision, the Nova Scotia Supreme Court decided that individual members, but not the band itself, could acquire title to the land by squatter's rights. Members of the Micmac Band, which had been divided into eleven bands, including the Afton Band, had lived on the land openly for over 60 years.

INDIAN ACT, Section 18	EXPLANATION
RESERVES	
18. (1) Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart; and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.	This section repeats the definition of "reserve" from section 2(1) as lands held by the federal government for the use and benefit of bands. It then provides that, subject to the Act and the terms of any treaty or surrender, the federal government can decide whether any particular use of reserve lands is for the "use and benefit" of a band. Many decisions about reserve land use, however, are made by the Minister, not the full government (see sections 20, 28(2), 53(1), 57 and 58). The major role of the government is to accept surrenders (section 40) and to give bands the control and management of reserve lands (section 60). Section 18(1) may have been intended to avoid breach of trust lawsuits, to prevent a challenge to the validity of a surrender, or to ensure that a surrender did not end the status of the land as reserve land. The exact purpose of the section is not clear, and there is no pattern of use of the power to declare a use of reserve lands as being for the "use and benefit" of a band.
(2) The Minister may authorize the use of lands in a reserve for the purpose of Indian schools, the administration of Indian affairs, Indian burial grounds, Indian health projects or, with the consent of the council of the band, for any other purpose for the general welfare of the band, and may take any lands in a reserve required for such purposes, but where an individual Indian, immediately prior to such taking, was entitled to the possession of such lands, compensation for such use shall be paid to the Indian, in such amount as may be agreed between the Indian and the Minister, or, failing agreement, as may be determined in such manner as the Minister may direct. R.S., c.149, s.18; 1956, c.40, s.8.	The Minister can allow reserve lands to be used for Indian schools, DIAND offices, Indian cemeteries or Indian health projects without the consent of the band council. With the consent of the band council the Department of Indian Affairs and Northern Development can authorize the use of reserve land for other purposes that benefit the band. However, if an Indian has the legal right to live on or use a piece of land in this way, then the Indian shall be paid for the loss of use of the land. If the amount the Indian is to be paid cannot be agreed upon, the Minister will decide how the amount will be worked out.

Case 16. In Brick Cartage Limited v. The Queen, a 1964 decision, the Exchequer Court of Canada (now the Federal Court of Canada) ruled that the federal Crown did not have any authority, responsibility, or control over a bridge located on a reserve or its maintenance, and could not be found liable for damage to a truck resulting from a collapse of that bridge. The provincial Crown has legal title to those lands, while the band has a right to live on them. Possession of the land by a band has the same practical effect on day-to-day control as that of any person owning the title in fee simple. The maintenance of the bridge was carried on by the band, with the same help and supervision from the province as a municipal corporation received and with the same supervision and control in relation to the expenditure of band or public moneys as is generally imposed under the Act.

Case 75. In The Pas Merchants Ltd. v. R., a 1974 decision, the Federal Court of Canada, Trial Division, decided that this subsection gives the Minister, with the consent of the band council, the authority for a government proposal to finance construction of a shopping centre on an Indian reserve and to lease such space to a number of businesses. A company composed of the residents and businessmen of a town does not have the status to prevent the construction of that shopping centre.

Case 115. In R. v. Sellars, a 1977 decision, the British Columbia Provincial Court stated that an Indian, even though he possessed no formal authority from the band, had the right to expel, with such force as was necessary in the circumstances, any trespassers on reserve lands by virtue of the fact of his real interest in such lands.

Case 1. In Afton Band of Indians v. A.-G. of Nova Scotia, a 1978 decision, the Nova Scotia Supreme Court ruled that under the provisions of the Indian Act, especially subsection 18(1), an Indian band, while having certain powers regarding the use and occupation of reserve lands, has no power to hold land. Since a band is not a corporation, it cannot acquire or hold real property, or obtain title to land by adverse possession ("squatter's rights"). Individual members of the band, however, can obtain title to land by adverse possession. If the Court finds that lands did vest in the members of a Band as tenants-in-common, but it cannot determine whether it vested in all the members on the list, it would be necessary for the Legislature to pass a statute saying that the land vests in some person or body for the benefit of the band.

Case 133. In Sandy v. Sandy, a 1979 decision, the Ontario Court of Appeal decided that it did not have the jurisdiction to grant a restraining order for the preservation of a parcel of reserve land where the Indian husband owned the Certificate of Possession and his wife was applying for division of the family home under a provincial Act. An Indian has an "interest" in land within the meaning of that provincial Act; however, the wife is only entitled to compensation for her interest and not for a share of that land.

Case 148. In Western Industrial Contractors Ltd. v. Sarcee Developments Ltd., a 1979 decision, the Alberta Supreme Court, Appellate Division, stated that a builders' lien may be filed against the leasehold interest of a company that was leasing conditionally surrendered reserve lands without affecting the band's right to the future enjoyment of that land (its "reversionary interest").

Case 43. In Re Hopkins and Hopkins, a 1980 decision, the Ontario County Court ruled that while this Act does limit the transfer of possession of reserve Indian lands, it does not prevent an Indian spouse from obtaining an order under the provincial Family Law Reform Act for exclusive possession of the family home upon the breakdown of the marriage. The approval of the Minister of Indian Affairs and Northern Development is needed to execute such an order.

Case 45. In Joe v. Findlay, a 1981 decision, the British Columbia Court of Appeal stated that this section means that the right to the use and benefit of reserve lands is a collective right in common conferred upon and accruing to the band members as a body, not individually. A band member cannot occupy a parcel of land already set aside by the band as a special development area without the approval of the band council.

Case 20. In Canadian Pacific Ltd. v. Paul, a 1981 decision, the New Brunswick Queen's Bench granted an injunction to prevent the Defendant Indians from interfering with the Plaintiff's right to use a railway right-of-way across the Indian reserve (under section 18 of the Indian Act), on the basis that the Plaintiff had a valid title by adverse possession ("squatter's rights"). Despite section 31 of the Indian Act, the Court had jurisdiction to resolve the question of ownership of such land.

Case 41. In Guerin v. R., a 1982 decision, the Federal Court of Appeal stated that the surrender of reserve land "in trust to lease the same to such person(s) and upon such terms as the Government of Canada may deem most conducive to our welfare" in this case did not make the Crown a trustee or impose upon the Crown an equitable obligation, enforceable in the courts, to deal with the land in a certain manner. The use of the phrase "in trust" just emphasized the importance of the political or governmental responsibility for the land. The authority of the federal cabinet, set out in section 18, to determine whether a particular purpose for which land in a reserve was to be used was one for the use and benefit of the band was an indication of an intention that it was for the government, not the courts, to decide what was for the band's use and benefit. The band, then, could not sue the Crown for damages for "breach of trust" when surrendered lands were leased to a golf club by the Crown on terms not contemplated by the band.

INDIAN ACT, Section 19	EXPLANATION
19. The Minister may (a) authorize surveys of reserves and the preparation of plans and reports with respect thereto, (b) divide the whole or any portion of a reserve into lots or other subdivisions, and (c) determine the location and direct the construction of roads in a reserve. R.S., c.149, s.19.	The Minister can arrange for the survey of reserve lands. The Minister can divide reserve land into lots or other subdivisions. He can also decide where roads are to go on reserves and direct the building of roads on reserves.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 20

POSSESSION OF LANDS IN RESERVES

20. (1) No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.

(2) The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.

(3) For the purposes of this Act, any person who, on the 4th day of September 1951, held a valid and subsisting Location Ticket issued under The Indian Act, 1880, or any statute relating to the same subject-matter, shall be deemed to be lawfully in possession of the land to which the location ticket relates and to hold a Certificate of Possession with respect thereto.

(4) Where possession of land in a reserve has been allotted to an Indian by the council of the band, the Minister may, in his discretion, withold his approval and may authorize the Indian to occupy the land temporarily and may prescribe the conditions as to use and settlement that are to be fulfilled by the Indian before the Minister approves of the allotment.

EXPLANATION

Sections 20 to 27 establish a system of land holding of reserve lands for band members. The system requires band council co-operation, and many band councils do not use the system established in these sections. Under these sections a band member can get "lawful possession" of reserve land by the band council "allotting" particular land to the member and the Minister approving the allotment (section 20(1)). The Minister will issue a Certificate of Possession officially recording that a "right of possession" to the land has been given to the member (section 20(2)). Under earlier Indian Acts members could get a "location ticket". Those are now the same as a Certificate of Possession (section 20(3)). If the Minister wants to make approval of the allotment conditional upon the member doing something or only wants to grant the member temporary rights, the Minister can issue a Certificate of Occupation, which will last for two years (and can be extended for a further two years). At the end of the life of the Certificate of Occupation the Minister can either grant or refuse a Certificate of Possession (sections 20(4) and (5)). The Department of Indian Affairs and Northern Development also issues a document they call a Certificate of Entitlement when they cannot issue a Certificate of Possession because there is no proper survey of the property. This document is not mentioned in the Indian Act.

INDIAN ACT, Section 20	EXPLANATION
(5) Where the Minister withholds approval pursuant to subsection (4), he shall issue a Certificate of Occupation to the Indian, and the Certificate entitles the Indian, or those claiming possession by devise or descent, to occupy the land in respect of which it is issued for a period of two years from the date thereof. (6) The Minister may extend the term of a Certificate of Occupation for a further period not exceeding two years, and may, at the expiration of any period during which a Certificate of Occupation is in force (a) approve the allotment by the council of the band and issue a Certificate of Possession if in his opinion the conditions as to use and settlement have been fulfilled, or (b) refuse approval of the allotment by the council of the band and declare the land in respect of which the Certificate of Occupation was issued to be available for re-allotment by the council of the band. R.S., c.149, s.20.	

COURT DECISIONS

Case 52. In Lazare v. St. Lawrence Seaway, a 1956 decision, the Quebec Superior Court concluded that the rights of Indians to reserve land consist of one of occupation and of possession. Property right rests with the Crown. Being the owner of the estate in the lands, the Crown is entitled to expropriate it upon paying compensation for the loss of occupancy to the band and to the Indian holding a Certificate of Possession.

Case 89. In R. v. Devereux, a 1965 decision, the Supreme Court of Canada ruled that a non-Indian can continue to live on reserve farm land for the remainder of the term of the lease given to him by a widow who held a Certificate of Possession and who died prior to the expiration of the lease. When the widow died, her title was that of a locatee under subsection 20(1). She could not leave the land to the non-Indian in her will. The land must be put up for sale upon the expiration of the lease and any permits granted by the Minister. The scheme of the Indian Act is to maintain intact for Indian bands reserves set apart for them, regardless of the wishes of any individual Indian to alienate for his own benefit any portion of the reserve of which he is a locatee.

Case 55. In Lindley v. Derrikson, a 1976 decision, the British Columbia Supreme Court ruled that a Certificate of Possession for a parcel of land was wrongly issued to a band. The land had been transferred from an Indian, who had entered into a void agreement with the band to exchange that parcel of land for other reserve lands on the condition that he could live on that parcel until the band started actual commercial construction on it. Since the transfer was ineffective, the lands were ordered to be transferred back to the original owners.

Case 115. In R. v. Sellars, a 1977 decision, the British Columbia Provincial Court stated that even if an Indian possessed no Certificate of Possession and no formal authority of the band, he had the right to expel, with such force as was necessary in the circumstances, any trespassers on reserve land by virtue of the fact of his real interest in those lands.

Case 54. In Leonard v. Kamloops Indian Band, a 1978 decision, the British Columbia County Court stated that under subsection 20(2), the sole power to issue a Certificate of Possession rests with the Minister. Even though the Minister may act on the advice of the band, the Plaintiff cannot look to the band for relief and for return of possession and ownership of certain reserve lands. Since the Minister must be a party to that action, the Federal Court has the sole jurisdiction to hear the matter.

Case 60. In Mathias v. Findlay, a 1978 decision, the British Columbia Supreme Court Chambers decided that while the federal Crown has legal title to reserve lands, the band's title to such lands is not merely of a usufructuary nature, but implies possession in the band - if the band can allot possession of certain reserve land to an Indian, then it must have possession in the first instance. Since possession is not in the Crown, the band can bring an action for trespass against an Indian without joining the federal Crown as a party.

Case 133. In Sandy v. Sandy, a 1979 decision, the Ontario Court of Appeal decided that it did not have the jurisdiction under the provincial Family Law Reform Act to grant a restraining order for the preservation of a parcel of reserve land or to enable the Indian wife to register a Certificate of Lis Pendens against that land where the Indian husband held the Certificate of Possession and the wife was applying for division of the land and family home. The Indian wife is entitled to compensation for her interest, but not for a share of that land.

Case 53. In Leonard v. Gottfriedson, a 1980 decision, the British Columbia Supreme Court ruled that the Defendant Indian was unlawfully in possession of certain reserve lands because some members of the band council (most notably the chief) had signed a written resolution authorizing the transfer of those lands to the Defendant without the formality of a vote or a meeting where there was clearly a conflict of interest. Thus there was no valid resolution to submit to the Minister. Since an interest in possession cannot be acquired without ministerial approval, the resolution of the band council was ineffective, and no enforceable contract was in effect.

Case 43. In Re Hopkins and Hopkins, a 1980 decision, the Ontario County Court said that while this Act does limit the transfer of possession of reserve Indian lands, it does not prevent an order under the provincial Family Law Reform Act granting exclusive possession of the family home to an Indian spouse upon the breakdown of the marriage. The approval of the Minister of Indian Affairs and Northern Development is necessary to give effect to the Order.

Case 45. In Joe v. Findlay, a 1981 decision, the British Columbia Court of Appeal said that under subsection 20(1), the common right of use and benefit of reserve land could only be exercised by an individual band member if the band council had allotted the right of possession to that band member with Crown consent. Since the right to possession is dependent upon allotment or other lawful acquisition of allotted land, the Defendant Indian had no right of possession of the unoccupied and unallotted land by law or as a tenant in common, and thus was guilty of trespass without lawful excuse.

INDIAN ACT, Section 21	EXPLANATION
21. There shall be kept in the Department a register, to be known as the Reserve Land Register, in which shall be entered particulars relating to Certificates of Possession and Certificates of Occupation and other transactions respecting lands in a reserve. R.S., c.149, s.21.	The Department of Indian Affairs and Northern Development shall keep a list of all the details of Certificates of Possession, Certificates of Occupation, and any other transactions affecting reserve land.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 22	EXPLANATION
22. Where an Indian who is in possession of lands at the time they are included in a reserve, made permanent improvements thereon before that time, he shall be deemed to be in lawful possession of such lands at the time they are so included. R.S., c.149, s.22.	If an Indian had been using land before it was included in a reserve and had built any buildings or fences on the land, he or she will have "lawful possession" of the land (that is, the same rights as with a Certificate of Possession).

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 23	EXPLANATION
23. An Indian who is lawfully removed from lands in a reserve upon which he has made permanent improvements may, if the Minister so directs, be paid compensation in respect thereof in an amount to be determined by the Minister, either from the person who goes into possession or from the funds of the band, at the discretion of the Minister. R.S., c.149, s.23.	When an Indian has a piece of reserve land taken from him and he has made permanent improvements to it (for example, built a house, a barn, or fenced it), then the Minister shall decide whether he should be paid for them and if so, how much he should be paid and who should pay it - either the person who takes over the land or the band.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 24	EXPLANATION
24. An Indian who is lawfully in possession of lands in a reserve may transfer to the band or to another member of the band the right to possession of the land, but no transfer or agreement for the transfer of the right to possession of lands in a reserve is effective until it is approved by the Minister. R.S. c.149, s.24.	An Indian who owns a piece of reserve land can transfer the land to another member of the band or to the band, but the Minister must agree to the transfer before it is valid.

COURT DECISIONS

Case 55. In Lindley v. Derrikson, a 1976 decision, the British Columbia Supreme Court ruled that a transfer of land between an Indian and a band is ineffective unless both the instrument of the transfer and any agreement relating to that transfer is put before and approved by the Minister.

Case 13. In Re Bell and Bell, a 1977 decision, the Ontario Supreme Court stated that this section serves to encumber land by restricting the body of possible transferees; that is, in the nature of a statutory covenant running with the land. Thus, an order for partition and sale under a provincial Act is valid if it is between Indian co-owners in respect of reserve lands. If such an Order, however, allows a sale to a non-Indian, then the restrictions and requirements of this Act become operative.

Case 53. In Leonard v. Gottfriedson, a 1980 decision, the British Columbia Supreme Court ruled that the Defendant Indian was unlawfully in possession of a parcel of reserve land, because some members of the band council (most notably the chief, who was the father and business partner of the Defendant Indian) had signed a written resolution authorizing the transfer of those lands to the Defendant without the formality of a vote or a meeting where there was clearly a conflict of interest. Since there was no valid resolution to submit to the Minister and an interest in possession cannot be acquired without ministerial approval, the resolution and the transfer were ineffective.

Case 43. In Re Hopkins and Hopkins, a 1980 decision, the Ontario County Court decided that while this Act does limit the transfer of possession of reserve Indian lands, it does not prevent an order under the provincial Family Law Reform Act granting exclusive possession of a matrimonial home to an Indian spouse upon the breakdown of the marriage. The approval of the Minister of Indian Affairs and Northern Development is necessary for the execution of such an Order.

INDIAN ACT, Section 25	EXPLANATION
25. (1) An Indian who ceases to be entitled to reside on a reserve may, within six months or such further period as the Minister may direct, transfer to the band or another member of the band the right to possession of any lands in the reserve of which he was lawfully in possession.	Within six months (or longer if the Minister agrees) of the date he ceases to be a member of a band, an Indian may transfer any piece of the reserve land that he owns to the band or to another band member.
(2) Where an Indian does not dispose of his right of possession in accordance with subsection (1), the right to possession of the land reverts to the band, subject to the payment to the Indian who was lawfully in possession of the land, from the funds of the band, of such compensation for permanent improvements as the Minister may determine. R.S., c.149, s.25.	If he does not transfer his land, then it goes back to the band, but the band must pay him for any buildings, fences, etc., he has put up on the land. The amount the band is to pay him is to be decided by the Minister.

COURT DECISIONS

Case 43. In Re Hopkins and Hopkins, a 1980 decision, the Ontario County Court decided that while this Act does limit the transfer of possession of reserve Indian lands, it does not prevent an order under the provincial Family Law Reform Act granting exclusive possession of a matrimonial home to an Indian spouse upon the breakdown of the marriage. The approval of the Minister of Indian Affairs and Northern Development is necessary for the execution of such an Order.

INDIAN ACT, Sections 26, 27	EXPLANATION
26. Whenever a Certificate of Possession or Occupation or a Location Ticket issued under *The Indian Act, 1880*, or any statute relating to the same subject-matter was, in the opinion of the Minister, issued to or in the name of the wrong person, through mistake, or contains any clerical error or misnomer, or wrong description of any material fact therein, the Minister may cancel the Certificate or Location Ticket and issue a corrected Certificate in lieu thereof. 1956, c.40, s.9. 27. The Minister may, with the consent of the holder thereof, cancel any Certificate of Possession or Occupation or Location Ticket referred to in section 26, and may cancel any Certificate of Possession or Occupation or Location Ticket that in his opinion was issued through fraud or in error. 1956, c.40, s.9.	A Certificate of Possession (or a Certificate of Occupation or a Location Ticket) can be ended (1) if it was issued to the wrong person or contains an error, in which case a new corrected document will be issued (section 26), (2) if the person holding the Certificate of Possession consents (section 27), or (3) if the Minister concludes that the Certificate of Possession was issued as a result of fraud or by a mistake (section 27). These sections do not permit a band council to cancel a Certificate of Possession.

COURT DECISIONS

Case 55. In *Lindley* v. *Derrikson*, a 1976 decision, the British Columbia Supreme Court ordered the parties to execute all documents necessary to restore each to his or its original postion after finding that certain agreements and transfers of reserve land were void.

INDIAN ACT, Section 28	EXPLANATION
28. (1) Subject to subsection (2), a deed, lease, contract, instrument, document or agreement of any kind whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.	A person who is not a band member does not have any rights to reserve land. Any agreement by which a person who is not a band member is given rights to reserve land is not valid.
(2) The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve. R.S., c.149, s.28; 1956, c.40, s.10.	However, the Minister can give a permit for anybody to live on or use reserve land for not more than one year (or longer if the band council agrees).

COURT DECISIONS

Case 89. In R. v. Devereux, a 1965 decision, the Supreme Court of Canada decided that a non-Indian who held reserve land under a lease granted to him by an Indian widow could not remain in possession of that land once the lease expired, even if the widow gave her rights to the land to him in her will. The non-Indian's only rights were to receive the proceeds of the sale of the right of possession (even if on an instalment basis). The purchaser can request the Crown to grant the non-Indian a series of one-year permits under this section. Upon the expiration of the last permit, the non-Indian's rights are governed by section 50, and he must give up possession. There are only two ways the non-Indian could remain lawfully in possession: (1) by lease made by the Minister for the benefit of any Indian under subsection 58(3); or (2) by permit under subsection 28(2).

Case 137. In Springbank Dehydration Ltd. v. Charles, a 1977 decision, the Federal Court of Canada, Trial Division, stated that a Minister's recommendation or offer for the granting of a lease to a non-Indian is not a permit by definition and does not give to that non-Indian an interest in reserve land. Any agreements respecting reserve land must conform with the requirements of section 28 to be valid.

Case 61. In Millbrook Indian Band v. N. Counties Residential Tenancies Board, a 1978 decision, the Nova Scotia Supreme Court, Appellate Division, ruled that unless the reserve lands are surrendered or the Minister has issued a permit under this subsection authorizing the use and occupation of such reserve lands, any tenancy agreement with a tenant of a trailer park located on that land is void.

Case 141. In Re Toussowasket Enterprises Ltd., a 1982 decision, the British Columbia Supreme Court decided that permission from the Minister is not required under section 28 to sublease reserve land leased under subsection 58(3).

INDIAN ACT, Section 29	EXPLANATION
29. Reserve lands are not subject to seizure under legal process. R.S., c.149, s.29.	Reserve lands cannot be taken to pay off a court judgment. For example, if an Indian or even an Indian band is sued in court for money and cannot pay, the reserve land cannot be taken or sold by the Courts to pay the debt.

COURT DECISIONS

Case 148. In Western Industrial Contractors Ltd. v. Sarcee Developments Ltd., a 1979 decision, the Alberta Supreme Court, Appellate Division, decided that this section is not a bar to the filing of a builder's lien against the leasehold interest of a development company (composed entirely of members of an Indian band) in conditionally surrendered reserve lands. The conditions in the surrender and the many protections afforded to the Crown in the lease protect the band and their reversionary land interest from any intrusion by the provincial lien legislation. Any charge and any enforcement proceedings under it can only be against the tenant's interest. If such lands are unpatented Crown lands, the Registrar of the provincial Land Titles Office shall record the lien in the day book. The Registrar of the Register of Indian lands in Ottawa has no jurisdiction to register the lien.

INDIAN ACT, Section 30	EXPLANATION
TRESPASS ON RESERVES 30. A person who trespasses on a reserve is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars or to imprisonment for a term not exceeding one month, or to both. R.S., c.149, s.30.	A person can be fined $50 or jailed for one month (or both) for trespassing on a reserve.

COURT DECISIONS

Case 92. In *R.* v. *Gingrich*, a 1958 decision, the Alberta Court of Appeal ruled that a non-Indian missionary, invited onto a reserve by a reserve Indian for the purpose of holding a religious service in her home, is not guilty of trespassing on the reserve. Since the *Indian Act* does not define "trespass", we must look to the common law definition: "trespass consists in entering upon the land without lawful justification". The missionary was lawfully justified in entering the reserve land without a permit, since the rights to preach and teach the gospel and to be heard are fundamental rights of all people. The band council, by establishing a system of permits, cannot create the offence of trespass on the reserve by those who enter it without a permit.

Case 129. In *R.* v. *Williams*, a 1958 decision, the Ontario Magistrate's Court decided that police officers, other than the R.C.M.P., have the right to go onto the reserve in the execution of their duties. City policemen who discover an Indian speeding on a provincial highway can follow that Indian onto the reserve in order to demand that he show them his driver's licence. This section must be read in conjunction with section 88. A Treaty cannot exempt Indians from the operation of the general law of the province.

Case 86. In *R.* v. *Crosby*, a 1980 decision, the Ontario Court of Appeal stated that in provinces, such as Ontario, where magistrates have been abolished, the Provincial Court Judge has jurisdiction to try the summary conviction offences. The Federal Court of Canada, with the Attorney General of Canada as the prosecutor, does not have exclusive jurisdiction under proceedings pursuant to section 30. The provincial Attorney General may conduct the proceedings where the federal Attorney General does not intervene.

INDIAN ACT, Section 31	EXPLANATION
31. (1) Without prejudice to section 30, where an Indian or a band alleges that persons other than Indians are or have been (a) unlawfully in occupation or possession of, (b) claiming adversely the right to occupation or possession of, or (c) trespassing upon a reserve or part of a reserve, the Attorney General of Canada may exhibit an Information in the Federal Court of Canada claiming, on behalf of the Indian or the band, the relief or remedy sought.	If an Indian or a band accuses somebody of being on reserve land against the law, the Department of Indian Affairs and Northern Development can go to court to get the person off the reserve land and to make them pay money in compensation.
(2) An Information exhibited under subsection (1) shall, for all purposes of the *Federal Court Act*, be deemed to be a proceeding by the Crown within the meaning of that Act.	
(3) Nothing in this section shall be construed to impair, abridge or otherwise affect any right or remedy that, but for this section, would be available to Her Majesty or to an Indian or a band. R.S., c.I-6, s.31; R.S., c.10 (2nd Supp.), s.65.	This section does not affect any other legal rights that the government, an Indian or the band has against trespassers.

Case 147. In Warman v. Francis, a 1958 decision, the New Brunswick Supreme Court decided that members of an Indian band were properly named as Defendants in an action by a farmer disputing the ownership of pre-Confederation reserve lands. The lands were sold to his ancestors prior to Confederation, with the full purchase price being paid before that time, but with the grant being issued after Confederation. There is no obligation to join any federal government officials as parties to an action respecting title to lands claimed by Indians as reserves. Subsection 31(3) specifically preserves the right of Indians to defend an action and their position as ordinary litigants.

Case 89. In R. v. Devereux, a 1965 decision, the Supreme Court of Canada stated that this section does not require that an action to put a non-Indian off a reserve, in respect of lands allotted to an individual Indian, be brought only on behalf of that particular Indian. The action may be brought by the Crown on behalf of the Indian or the band, depending on who alleges trespass. The scheme of the Indian Act is to maintain intact for Indian bands reserves set apart for them, regardless of the wishes of any individual Indian to alienate for his own benefit any portion of the reserve of which he is a locatee.

Case 146. In Wallace v. Fraser Companies Ltd., a 1973 decision, the New Brunswick Supreme Court ruled that a class action by Indians for damages for trespass against a company that constructed a pipeline on an unused railroad right-of-way on reserve land cannot be maintained, because such damages are personal and must be proved separately in the case of each Plaintiff Indian. It must be shown that the individual Indians had established title by adverse possession ("squatter's rights") and had an interest susceptible to trespass in those lands encroached upon. Use of the land by one individual Indian cannot be used by a group of Indians to establish title by adverse possession. In proper circumstances, the Indians may obtain an interim injunction, but the legal owner (i.e., the federal Crown) must be joined as a party before a permanent injunction can be issued. The Court will not declare the existence of title in a person who is not a party to the action. Moreover, it will also refuse to declare a right adverse to a person not a party to the action.

Case 115. In R. v. Sellars, a 1977 decision, the British Columbia Provincial Court stated that since the Indian Act does not define "trespass", the common law definition is applicable. There does not need to be a band by-law preventing trespass or even any formal authority of the band in order to enable an Indian to expel, with such force as is necessary in the circumstances, any trespassers on reserve lands. The fact of his real interest in those reserve lands gives him the authority.

Case 60. In Mathias v. Findlay, a 1978 decision, the British Columbia Supreme Court Chambers ruled that the appropriate proceeding against an Indian living on a parcel of reserve land without the authority of the band council is a representative action, brought by the band council members in the provincial superior court, for trespass on reserve lands. The federal Crown does not need to be joined as a party since possession of the land is in the band. An injunction preventing that Indian from living on that parcel may be granted. There is no section in this Act preventing the Court from hearing an action for trespass brought by the band against an Indian. Section 31 merely contemplates an action when non-Indians are unlawfully in possession.

Case 61. In Millbrook Indian Band v. N. Counties Residential Tenancies Board, a 1978 decision, the Nova Scotia Supreme Court, Appellate Division, decided that in the absence of any surrender of land, authorized permit, or valid tenancy agreement, a non-Indian tenant residing in a trailer park on reserve land is technically in unlawful occupation or possession of reserve lands by virtue of this section and could not, therefore, claim any right or privilege based upon that possession.

Case 68. In Moses v. R., a 1979 decision, the British Columbia Court of Appeal ruled that the province had a right to retake one-twentieth of reserve land for public works, such as the widening of roads, and was not liable for trespass. The band had the right to assert in a future action that more than the permitted one-twentieth of the land had been retaken.

Case 86. In R. v. Crosby, a 1980 decision, the Ontario Court of Appeal ruled that in provinces, such as Ontario, where magistrates have been abolished, the Provincial Court Judge has jurisdiction to try such summary conviction offences as trespassing on a reserve. Section 31, which provides that the Attorney General of Canada may claim relief on behalf of an Indian band in the case of trespass on a reserve by exhibiting "an Information in the present Federal Court", deals solely with civil proceedings (as opposed to the criminal proceeding by Information in the Court of Queen's Bench, in which the object is the punishment of some public offence) and does not touch the issue of jurisdiction to try the offence under section 30.

Case 118. In The Queen v. Smith, a 1980 decision, the Federal Court of Appeal ruled that the federal Crown was entitled to vacant possession of land in the surrendered portion of a reserve after compensating the non-Indians for permanent improvements made to those lands. The federal Crown can initiate and maintain an action in its own right for possession of reserve lands that have been surrendered to the Crown in trust for sale while they remain unsold.

Case 45. In Joe v. Findlay, a 1981 decision, the British Columbia Court of Appeal decided that a registered band member, who had moved his house onto an unoccupied parcel of reserve land without the approval of the band council, was guilty of trespass without lawful justification under the common law. Since a band member's right to live on a parcel of reserve land depends upon allotment or other lawful acquisition of allotted land, the Indian had no right of possession of the unallotted land by statute or as a tenant in common, and thus had no lawful justification to refute the charge of trespass.

Case 20. In Canadian Pacific Ltd. v. Paul, a 1981 decision, the New Brunswick Queen's Bench decided that, despite this section, it had the jurisdiction to resolve the question of ownership of a right-of-way across an Indian reserve allocated to a railway prior to Confederation.

Case 46. In Johnson v. B.C. Hydro, a 1981 decision, the British Columbia Supreme Court ruled that, in light of the fact that a band resolution granting an easement had not been made, an action against a company for constructing power transmission lines across an Indian reserve need not be brought by the Attorney General of Canada. The band had sufficient interest in the reserve land to maintain an action for trespass and for a mandatory injunction.

INDIAN ACT, Sections 32, 33	EXPLANATION
SALE OR BARTER OF PRODUCE	
32. (1) A transaction of any kind whereby a band or a member thereof purports to sell, barter, exchange, give or otherwise dispose of cattle or other animals, grain or hay, whether wild or cultivated, or root crops or plants or their products from a reserve in Manitoba, Saskatchewan or Alberta, to a person other than a member of that band, is void unless the superintendent approves the transaction in writing.	In Manitoba, Saskatchewan or Alberta, the Department of Indian Affairs and Northern Development must agree in writing to any deal in which any reserve farm produce is sold. It is a crime to make such a deal without the consent of the Department of Indian Affairs and Northern Development.
(2) The Minister may at any time by order exempt a band and the members thereof or any member thereof from the operation of this section, and may revoke any such order. R.S., c.149, s.32.	The Minister can make an order saying that this rule does not apply to a band or one of its members. He can also cancel an order after making it.
33. Every person who enters into a transaction that is void under subsection 32(1) is guilty of an offence. R.S., c.149, s.33.	

COURT DECISIONS

These sections have not been considered by the Courts to our knowledge.

INDIAN ACT, Section 34	EXPLANATION
ROADS AND BRIDGES	
34. (1) A band shall ensure that the roads, bridges, ditches and fences within the reserve occupied by that band are maintained in accordance with instructions issued from time to time by the superintendent.	A band shall look after the roads, bridges, ditches and fences on its reserves in accordance with the instructions of the Department of Indian Affairs and Northern Development.
(2) Where, in the opinion of the Minister, a band has not carried out the instructions of the superintendent given under subsection (1), the Minister may cause the instructions to be carried out at the expense of the band or any member thereof and may recover the cost thereof from any amounts that are held by Her Majesty and are payable to the band or such member. R.S., c.149, s.34.	If the Minister decides that a band has not looked after the roads, bridges, ditches and fences, as it was told to, then the Minister can arrange for the work to be done at the expense of the band.

COURT DECISIONS

Case 16. In Brick Cartage Ltd. v. R., a 1964 decision, the Exchequer Court of Canada (now the Federal Court of Canada) decided that neither the federal Crown nor an Indian band was liable for damages to the Plaintiff's truck resulting from a collapse of a bridge on the reserve. There is no evidence of any instructions regarding maintenance of the reserve roads received from the Superintendent under this section. The maintenance of roads on the reserve was carried out by the band through its elected representatives, with the same help and supervision from the provincial authorities as a municipal corporation received and with the same supervision and control in relation to the expenditure of band or public moneys as is generally imposed under this Act. There was no evidence of liability on their part. The band, its council, or any officers or servants employed by it are not agents, officers or servants of the federal Crown. The federal Crown did not have any authority, responsibility or control, either in fact or in law, in relation to the bridge or its maintenance and, therefore, could not be held liable for the damages either. The damages were as a result of the Plaintiff's own negligence in not satisfying himself that the old road could support a modern truck carrying excessive weight.

INDIAN ACT, Section 35	EXPLANATION
LANDS TAKEN FOR PUBLIC PURPOSES	
35. (1) Where by an Act of the Parliament of Canada or a provincial legislature, Her Majesty in right of a province, a municipal or local authority or a corporation is empowered to take or to use lands or any interest therein without the consent of the owner, the power may, with the consent of the Governor in Council and subject to any terms that may be prescribed by the Governor in Council, be exercised in relation to lands in a reserve or any interest therein.	When, under either federal or provincial law, a province, municipality or corporation has the power to take land or use it without the consent of the owner, that power can be used on reserve land if the federal cabinet agrees. By this section, provincial expropriation of reserve lands is made possible, but only with the consent of the federal cabinet (section 35(1)). The particular law that gives the power to take the land will be followed in the taking of reserve land unless the federal cabinet decides to establish other rules or decides to transfer the lands in question directly (section 35(2) and (3)). The money paid for the land will go to the band or to any band member who is entitled to compensation for loss of the particular land (section 25(4)).
(2) Unless the Governor in Council otherwise directs, all matters relating to compulsory taking or using of lands in a reserve under subsection (1) are governed by the statute by which the powers are conferred.	
(3) Whenever the Governor in Council has consented to the exercise by a province, authority or corporation of the powers referred to in subsection (1), the Governor in Council may, in lieu of the province, authority or corporation taking or using the lands without the consent of the owner, authorize a transfer or grant of such lands to the province, authority or corporation, subject to any terms that may be prescribed by the Governor in Council.	

INDIAN ACT, Section 35	EXPLANATION
(4) Any amount that is agreed upon or awarded in respect of the compulsory taking or using of land under this section or that is paid for a transfer or grant of land pursuant to this section shall be paid to the Receiver General for the use and benefit of any Indian who is entitled to compensation or payment as a result of the exercise of the powers referred to in subsection (1). R.S., c.149, s.35.	

COURT DECISIONS

Case 52. In *Lazare* v. *St. Lawrence Seaway*, a 1956 decision, the Quebec Superior Court stated that the right of Indians to reserve land consists of a usufructuary right of occupation and of possession. Property right rests with the Crown. When it is not a question of settling the amount of damages or any other claims that an expropriated party may have, but rather is a question of the Crown's very right in expropriating certain land and of the legality of the statutes under which it intends to proceed, the Superior Court of the province has jurisdiction, and the provisions in the *Exchequer Court Act* (now the *Federal Court Act*) do not take away from that Superior Court the power to inquire into the validity of the statutes concerned. Both this section and sections 10 and 18 of the *St. Lawrence Seaway Authority Act* are valid and sufficient to make the expropriation legal. Being the legal owner of the estate in the lands, the Crown is entitled to resume possession of it upon paying compensation to the Indians for their loss of occupancy.

Case 16. In *Brick Cartage Ltd*. v. *R*., a 1964 decision, the Exchequer Court of Canada dismissed an action in which the Plaintiff claimed compensation for damages to his truck that occurred when a bridge on an Indian reserve collapsed. The bridge, not being allocated to an individual Indian, surrendered or appropriated, was in the possession of the Indian band. There was no evidence of liability on the part of the authorities responsible for maintaining the bridge.

Case 139. In Sunday v. St. Lawrence Seaway, a 1976 decision, the Federal Court of Canada, Trial Division, ruled that the provincial courts have jurisdiction over a claim, based partly in tort and contract, for compensation for the expropriation of certain Indian lands and for the return of the unflooded portions of that expropriated land to such Indians.

Case 68. In Moses v. R., a 1979 decision, the British Columbia Court of Appeal ruled that the province had a right to retake one-twentieth of reserve land for public works, such as the widening of roads, and was not liable for trespass. The band had the right to assert in a future action that more than the permitted one-twentieth of the land had been retaken.

INDIAN ACT, Section 36	EXPLANATION
SPECIAL RESERVES 36. Where lands have been set apart for the use and benefit of a band and legal title thereto is not vested in Her Majesty, this Act applies as though the lands were a reserve within the meaning of this Act. R.S., c.149, s.36.	Where land has been set apart for the use and benefit of a band, but the government does not have legal title to it, that land is still a reserve for the purposes of this Act.

COURT DECISIONS

Case 79. In Re Enoch Decision, a 1981 decision, the Alberta Court of Appeal, in giving its opinions on certain questions posed, stated that a grant in fee simple to any purchaser (whether Indian or non-Indian, corporation or Indian band) in trust for the benefit of the band and its members in perpetuity would not result in lands ceasing to be "lands reserved for Indians". The band, in that case, would retain the benefits arising from a reserve, and the lands would fall within section 36 of the Indian Act. Where legal title is retained by the Crown and the disposition is of only a leasehold interest, there is no absolute surrender of the rights and interests of the band, and the lands remain a "reserve" within the meaning of section 36.

INDIAN ACT, Section 37	EXPLANATION
SURRENDERS 37. Except where this Act otherwise provides, lands in a reserve shall not be sold, alienated, leased or otherwise disposed of until they have been surrendered to Her Majesty by the band for whose use and benefit in common the reserve was set apart. R.S., c.149, s.37.	There are cases (for example, under Section 35) where reserve land can be taken from a band whether or not it agrees to surrender it. Usually, however, reserve land cannot be sold, leased, given away, or parted with until it has been surrendered to the government by the band.

COURT DECISIONS

Case 121. In R. v. Superior Concrete Products Ltd., a 1966 decision, the British Columbia Courts determined that a municipal noise abatement by-law applied to non-Indians residing on leased surrendered reserve lands.

Case 29. In Dimensional Investments Limited v. R., a 1967 decision, the Supreme Court of Canada ruled that a company, which was formed by certain land speculators solely for the purpose of purchasing (by instalments) certain Indian lands surrendered to the federal Crown for sale on behalf of the band in accordance with sections 37 to 41, was not entitled to have returned to them the money they had paid and forfeited as damages when they defaulted on the contract. The sum set out as liquidated damages upon default was considered to be a genuine attempt at a pre-estimate of damages, and was not excessive or a penalty.

Case 140. In Surrey v. Peace Arch Enterprises Ltd., a 1970 decision, the British Columbia Court of Appeal decided that reserve lands conditionally surrendered to the Crown and then leased to developers for an amusement park were not subject to municipal zoning and other by-laws and regulations specifying building, water service, sewage disposal and other requirements with respect to the land and the way it could and could not be used. The lands still remained "lands reserved for the Indians".

Case 68. In Moses v. R., a 1979 decision, the British Columbia Court of Appeal ruled that a surrender of land is not necessary where that land is expropriated by the Crown. The province has the right to retake one-twentieth of reserve land for public works, such as building roads.

Case 148. In Western Industrial Contractors Ltd., v. Sarcee Developments Ltd., a 1979 decision, the Alberta Supreme Court, Appellate Division, decided that a builders' lien may be filed against the leasehold interest in conditionally surrendered reserve lands of a development company composed entirely of members of an Indian band without affecting the band's reversionary interest in that land. The wording of this section is evidence of the great importance the government places on Indian lands. These provisions cannot be removed from the statute by proclamation.

Case 45. In Joe v. Findlay, a 1981 decision, the British Columbia Court of Appeal ruled that the right to the use and benefit of reserve lands is a collective right in common conferred upon and accruing to the band members as a body, not individually.

Case 79. In Re Enoch Decision, a 1981 decision, the Alberta Court of Appeal gave its opinions with respect to a number of questions posed regarding the surrender of certain post-Confederation reserve lands for development purposes and the extent to which provincial laws of general application would apply to the lands following surrender. (See subsection 2(1) "reserve" for a more detailed explanation of this case.)

Case 41. In Guerin v. R., a 1982 decision, the Federal Court of Appeal stated that the surrender of reserve land "in trust to lease the same to such person(s) and upon such terms as the Government of Canada may deem most conducive to our welfare" in this case did not make the Crown a trustee or impose upon the Crown an equitable obligation, enforceable in the courts, to deal with the land in a certain manner. The use of the phrase "in trust" just emphasized the importance of the political or governmental responsibility for the land. The authority of the federal cabinet, set out in section 18, to determine whether a particular purpose for which reserve land was to be used was one for the use and benefit of the band indicated that it was for the government, not the courts, to decide what was for the band's use and benefit. The band, then, could not sue the Crown for damages for "breach of trust" when surrendered lands were leased to a golf club by the Crown on terms not contemplated by the band.

INDIAN ACT, Section 38	EXPLANTION
38. (1) A band may surrender to Her Majesty any right or interest of the band and its members in a reserve. (2) A surrender may be absolute or qualified, conditional or unconditional. R.S., c.149, s.38.	A band may surrender any right it has to its reserve. For example, it can surrender only its oil rights, or it can surrender all its right to the land so that it can be sold. The surrender paper can be worded any way the band wants. The surrender paper might say, for example, that the surrender is forever, or it might say that it is only for a term of 5 years.

COURT DECISIONS

Case 29. In Dimensional Investments Ltd. v. R., a 1967 decision, the Supreme Court of Canada decided that a company, formed by land speculators solely for the purpose of purchasing (by instalments) certain Indian lands surrendered to the federal Crown for sale on behalf of the band, was not entitled to have returned the moneys paid and forfeited as damages as a result of their defaulting on the contract.

Case 140. In Surrey v. Peace Arch Enterprises Ltd., a 1970 decision, the British Columbia Court of Appeal ruled that when an Indian band "surrendered", in trust to the Crown, reserve lands (which also came within the boundaries of a municipality) for the purpose of leasing them to a development company, such "surrender" was not final and complete, but merely conditional. The lands continued to be "lands reserved for the Indians" within subsection 91(24) of the B.N.A. Act. "In trust" means in trust for the Indians who surrendered those lands. Those lands were not subject to certain municipal by-laws and regulations governing the use of the land. In obiter dictum, the Court went on to state that if an absolute surrender was made by the Indians and the surrender was followed by a sale by the Crown to a purchaser, such lands would cease to be a reserve under the provisions of the Indian Act and the B.N.A. Act.

Case 148. In Western Industrial Contractors Ltd. v. Sarcee Developments Ltd., a 1979 decision, the Alberta Supreme Court, Appellate Division, stated that a builders' lien may be filed against a development company's leasehold interest in conditionally surrendered reserve land without affecting the band's right to the future enjoyment of that land.

Case 79. In Re Enoch Decision, a 1981 decision, the Alberta Court of Appeal said that once land is surrendered absolutely and granted in fee simple to a purchaser (whether Indian, non-Indian, corporation or Indian band), it ceases to be "land reserved for Indians", and the laws of Alberta (such as the Dower Act and the Expropriation Act) apply to it. The Indians no longer have a reversionary interest in those lands. Lands granted in fee simple to any purchaser (whether Indian or non-Indian, corporation or Indian band) in trust for the benefit of the band and its members in perpetuity continue to be "lands reserved for Indians". Where legal title is retained by the Crown and the disposition is of only a leasehold interest, there is no absolute surrender of the rights and interests of the band, which remain enforceable by the Minister under subsection 53(1), and the lands remain a "reserve". The band retains the rights of a landlord through the agency of the Minister and the right of reversion in its interests. It has a direct interest in the collection of and the benefit from the rents reserved. This section must be interpreted and applied in light of the duties imposed on the Minister by subsection 53(1) - it does not abrogate those powers and duties of the Minister that may arise out of the operation of subsection 53(1), in that his continuing attention may be a qualification or condition of the surrender.

Case 41. In Guerin v. R., a 1982 decision, the Federal Court of Appeal stated that the surrender of reserve land "in trust to lease the same to such person(s) and upon such terms as the Government of Canada may deem most conducive to our welfare" in this case did not make the Crown a trustee or impose upon the Crown an equitable obligation, enforceable in the courts, to deal with the land in a certain manner. The use of the phrase "in trust" just emphasized the importance of the political or governmental responsibility for the land. The authority of the federal cabinet, set out in section 18, to determine whether a particular purpose for which reserve land was to be used was one for the use and benefit of the band indicated that it was for the government, not the courts, to decide what was for the band's use and benefit. The band, then, could not sue the Crown for damages for "breach of trust" when surrendered lands were leased to a golf club by the Crown on terms not contemplated by the band.

INDIAN ACT, Section 39	EXPLANATION
39. (1) A surrender is void unless (a) it is made to Her Majesty, (b) it is assented to by a majority of the electors of the band (i) at a general meeting of the band called by the council of the band, (ii) at a special meeting of the band called by the Minister for the purpose of considering a proposed surrender, or (iii) by a referendum as provided in the reulations, and	A surrender can only be made to the government; it cannot be made to anybody else. A surrender must be agreed to by a majority of the electors of the band and they must do this in one of the following ways: (i) at a general meeting called by the Band Council; (ii) at a special meeting of the band called by the Minister; or (iii) by a referendum.
(c) it is accepted by the Governor in Council.	A surrender must be accepted by the federal cabinet. See Case 56 under Court Decisions.
(2) Where a majority of the electors of a band did not vote at a meeting or referendum called pursuant to subsection (1) of this section or pursuant to section 51 of the Indian Act, chapter 98 of the Revised Statutes of Canada, 1927, the Minister may, if the proposed surrender was assented to by a majority of the electors who did vote, call another meeting by giving thirty days notice thereof or another referendum as provided in the regulations.	It should be noted that a majority of all the electors of the band is needed and not just a majority of those attending the meeting. If a majority of the electors did not vote at the meeting or in the referendum, but a majority of those who did vote voted for the surrender, then the Minister can call another meeting. If a majority of the electors who vote at this second meeting agree to the surrender, then the surrender is passed. If the band council asks for a secret vote, or if the Minister thinks it would be a good idea, then the vote on the surrender shall be by secret ballot.

INDIAN ACT, Section 39	EXPLANATION
(3) Where a meeting is called pursuant to subsection (2) and the proposed surrender is assented to at the meeting or referendum by a majority of the electors voting, the surrender shall be deemed, for the purpose of this section, to have been assented to by a majority of the electors of the band. (4) The Minister may, at the request of the council of the band or whenever he considers it advisable, order that a vote at any meeting under this section shall be by secret ballot. (5) Every meeting under this section shall be held in the presence of the superintendent or some other officer of the Department designated by the Minister. R.S., c.149, s.39; 1956, c.40, s.11.	A referendum is like an election. Instead of voting for candidates, the people vote for or against a proposal printed on the ballot paper.

COURT DECISIONS

Case 56. In Logan v. Styres, a 1959 decision, the Ontario High Court ruled that the Parliament of Canada has legislative authority to provide for the surrender of Indian reserve lands, even though it is done by a method that interferes with the system of internal government of Indian bands by substituting elected band councils for hereditary chiefs.

See also Cases 29, 148, and 41 as detailed under Section 37 of the Act.

INDIAN ACT, Section 40	EXPLANATION
40. When a proposed surrender has been assented to by the band in accordance with section 39, it shall be certified on oath by the superintendent or other officer who attended the meeting and by the chief or a member of the council of the band, and shall then be submitted to the Governor in Council for acceptance or refusal. R.S., c.149, s.40.	A departmental official must be present at any meeting regarding a proposed surrender. If the band votes in favour of the surrender, then the official and either the chief or a councillor must write on the surrender paper that it was agreed to by the band.

COURT DECISIONS

See Cases 29 and 148 as detailed under Section 37 of the Act.

INDIAN ACT, Section 41	EXPLANATION
41. A surrender shall be deemed to confer all rights that are necessary to enable Her Majesty to carry out the terms of the surrender. R.S., c.149, s.41.	A surrender gives the Department of Indian Affairs and Northern Development all the rights it needs to do what the surrender paper says. For example, if a surrender is for the purpose of leasing the land, then the Department of Indian Affairs and Northern Development can arrange to have a lease drawn up and signed and can do everything else needed to have the land properly leased.

COURT DECISIONS

Case 29. In Dimensional Investments Ltd. v. R., a 1967 decision, the Supreme Court of Canada ruled that the federal Crown may lawfully enforce a forfeiture clause in a contract for the purchase (by instalments) of surrendered reserve lands and may retain any moneys already paid as damages after the purchasing company (composed of land speculators) defaulted and breached the contract.

Case 148. In Western Industrial Contractors Ltd. v. Sarcee Developments Ltd., a 1979 decision, the Alberta Supreme Court, Appellate Division, noted that once a surrender has taken place, this section becomes effective. The execution of a lease under consideration is evidence that the Minister is purporting to carry out the terms of the surrender. The Court then stated that a builders' lien may be filed against the leasehold interest of a development company without affecting the band's right to the future enjoyment of the surrendered reserve lands.

Case 79. In Enoch Decision, a 1981 decision, the Alberta Court of Appeal gave its opinions about a number of questions concerning proposals to surrender certain post-Confederation reserve lands for development purposes and the extent to which provincial law would apply to the lands following surrender. (See subsection 2(1) "reserve" for a more detailed explanation of this case.)

INDIAN ACT, Section 42	EXPLANATION
DESCENT OF PROPERTY	
42. (1) Unless otherwise provided in this Act, all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister, and shall be exercised subject to and in accordance with regulations of the Governor in Council.	Sections 42 to 50 apply only to the property of an Indian person who usually lived on the reserve prior to his or her death.
(2) The Governor in Council may make regulations for providing that a deceased Indian who at the time of his death was in possession of land in a reserve shall, in such circumstances and for such purposes as the regulations prescribe, be deemed to have been at the time of his death lawfully in possession of that land.	When a person who usually lives on a reserve dies, the Department of Indian Affairs and Northern Development has the power to decide who is to have his estate (belongings). The Department of Indian Affairs and Northern Development can make regulations saying how the possessions of the person who has died are to be looked after.
(3) Regulations made under this section may be made applicable to estates of Indians who died before, on or after the 4th day of September 1951. R.S., c.149, s.42; 1956, c.40, s.12.	(See Indian Estates Regulations, C.R.C. 1978, c.954.)

COURT DECISIONS

Case 2. In A.- G. of Canada v. Canard, a 1975 decision, the Supreme Court of Canada ruled that this section is intra vires Parliament. It does not conflict with the Canadian Bill of Rights. The Minister's appointment of an administrator of a deceased Indian's estate is valid and takes effect over any opposing appointment by the provincial Surrogate Court. The Minister's jurisdiction is reviewable only under the Indian Act and the Federal Court Act, and not by the provincial Courts.

INDIAN ACT, Section 43	EXPLANATION
43. Without restricting the generality of section 42, the Minister may	While the Minister generally has power to look after estates, he is specifically given the power to do the following things:
(a) appoint executors of wills and administrators of estates of deceased Indians, remove them and appoint others in their stead;	(a) appoint people to look after the property of Indians who have died. The Minister can also fire anybody he appoints and replace him with somebody else;
(b) authorize executors to carry out the terms of the wills of deceased Indians;	(b) permit people to carry out the terms specified in the wills of Indians who have died;
(c) authorize administrators to administer the property of Indians who die intestate;	(c) permit people to look after the property of Indians who die without making a will;
(d) carry out the terms of wills of deceased Indians and administer the property of Indians who die intestate; and	(d) carry out the terms of wills or look after the property of Indians who die without making wills;
(e) make or give any order, direction or finding that in his opinion it is necessary or desirable to make or give with respect to any matter referred to in section 42. R.S., c.149, s.43.	(e) make any order that he believes appropriate concerning the property of Indians who have died.

COURT DECISIONS

Case 150. In Re Williams Estate and Trustee Act, a 1960 decision, the British Columbia Supreme Court stated that the provisions of a provincial act, whereby a wife living in adultery at the time of her husband's death takes no share in his estate if he dies without a will, is applicable to Indians.

Case 2. In A.- G. of Canada v. Canard, a 1975 decision, the Supreme Court of Canada ruled that the Minister rightly appointed an administrator of a deceased Indian's estate. This section is intra vires Parliament, and does not conflict with the Canadian Bill of Rights. The provincial Surrogate Court does not have the jurisdiction to appoint an administrator of a deceased Indian's estate without the Minister's consent.

INDIAN ACT, Section 44	EXPLANATION
44. (1) The court that would have jurisdiction if the deceased were not an Indian may, with the consent of the Minister, exercise, in accordance with this Act, the jurisdiction and authority conferred upon the Minister by this Act in relation to testamentary matters and causes and any other powers, jurisdiction and authority ordinarily vested in that court.	The Minister may decide that the regular provincial or territorial courts that handle the estates of non-Indians shall handle the estate of an Indian. These courts will use the normal provincial or territorial laws, so long as there is no conflict with the Indian Act.
(2) The Minister may direct in any particular case that an application for the grant of probate of the will or letters of administration shall be made to the court that would have jurisdiction if the deceased were not an Indian, and the Minister may refer to such court any question arising out of any will or the administration of any estate.	
(3) A court that is exercising any jurisdiction or authority under this section shall not without the consent in writing of the Minister enforce any order relating to real property on a reserve. R.S., c.149, s.44.	No court order dealing with land on a reserve will be followed without the written consent of the Minister.

COURT DECISIONS

Case 2. In A.- G. of Canada v. Canard, a 1975 decision, the Supreme Court of Canada decided that the widow's appointment as the Administratrix of the estate of her deceased Indian husband by the Manitoba Surrogate Court, without the Minister's consent under subsection 44(1), was ineffective. The Minister rightly appointed an administrator of that Indian's estate under sections 42 and 43. This section is intra vires Parliament.

INDIAN ACT, Section 45	EXPLANATION
WILLS	
45. (1) Nothing in this Act shall be construed to prevent or prohibit an Indian from devising or bequeathing his property by will.	The Indian Act does not stop an Indian from making a will.
(2) The Minister may accept as a will any written instrument signed by an Indian in which he indicates his wishes or intention with respect to the disposition of his property upon his death.	The Minister can accept as a will any written document signed by an Indian in which he says what he wants done with his property when he dies.
(3) No will executed by an Indian is of any legal force or effect as a disposition of property until the Minister has approved the will or a court has granted probate thereof pursuant to this Act. R.S., c.149, s.45.	An Indian's will does not take effect until the Minister has given his approval or a court has given somebody the power to carry out its terms.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 46	EXPLANATION
46. (1) The Minister may declare the will of an Indian to be void in whole or in part if he is satisfied that	The Minister can say that an Indian's will is invalid or that part of it is invalid if he believes that:
(a) the will was executed under duress or undue influence;	(a) somebody forced the Indian to sign the will;
(b) the testator at the time of execution of the will lacked testamentary capacity;	(b) when he signed the will, the Indian was not able to make a will (for example, because he was senile or insane and did not know the consequences of what he was doing);
(c) the terms of the will would impose hardship on persons for whom the testator had a responsibility to provide;	(c) the terms of the will would create hardships for the Indian's family;
(d) the will purports to dispose of land in a reserve in a manner contrary to the interest of the band or contrary to this Act;	(d) the will tries to give away reserve land in a way that is not for the good of the band or that conflicts with the *Indian Act*;
(e) the terms of the will are so vague, uncertain or capricious that proper administration and equitable distribution of the estate of the deceased would be difficult or impossible to carry out in accordance with this Act; or	(e) it is so hard to figure out what the will means that it would be very hard, if not impossible, to carry out the will; or
(f) the terms of the will are against the public interest.	(f) the will is against public good - that is, if it directs that something wrong or illegal be done.

INDIAN ACT, Section 46	EXPLANATION
(2) Where a will of an Indian is declared by the Minister or by a court to be wholly void, the person executing the will shall be deemed to have died intestate, and where the will is so declared to be void in part only, any bequest or devise affected thereby, unless a contrary intention appears in the will, shall be deemed to have lapsed. R.S., c.149, s.46.	When the Minister or a court says that an Indian's will is not valid, then it is as if the Indian died without making a will. When the Minister or a court says that only part of a will is not valid, then only that part of the will is invalid, and all the things given away in it go back with the rest of the property in the will, unless the will says differently.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 47	EXPLANATION
APPEALS 47. (1) A decision of the Minister made in the exercise of the jurisdiction or authority conferred upon him by section 42, 43 or 46 may, within two months from the date thereof, be appealed by any person affected thereby to the Federal Court of Canada, if the amount in controversy in the appeal exceeds five hundred dollars or if the Minister consents to an appeal. R.S., c.I-6, s.47; R.S., c.10 (2nd Supp.), s.65. (2) [Repealed, R.S., c.10 (2nd Supp.), s.65.]	Any decision that the Minister makes under the power given by sections 42, 43 and 46 can be appealed to the Federal Court of Canada. The appeal must be made within two months of the Minister's decision, and the amount being argued over must be more than $500 in value; if it is not, the Minister must agree to the appeal.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 48	EXPLANATION
DISTRIBUTION OF PROPERTY ON INTESTACY	
48. (1) Where the net value of the estate of an intestate does not, in the opinion of the Minister, exceed in value two thousand dollars, the estate shall go to the widow.	This part deal with how an Indian's belongings are divided up if he dies without a will. Where the value of the estate is less than two thousand dollars, then the estate is given to the widow. Where the value of the estate is more than two thousand dollars, then the first two thousand goes to the widow and the rest is divided as follows:
(2) Where the net value of the estate of an intestate, in the opinion of the Minister, is two thousand dollars or more, two thousand dollars shall go to the widow, and the remainder shall go as follows, namely:	
(a) if the intestate left no issue, the remainder shall go to the widow;	(a) if there are no children, the rest goes to the widow;
(b) if the intestate left one child, one-half of the remainder shall go to the widow; and	(b) if there was one child, then half goes to the child and half goes to the widow; and
(c) if the intestate left more than one child, one-third of the remainder shall go to the widow;	(c) if there was more than one child, then two-thirds go to the children and one-third goes to the widow.
and where a child has died leaving issue and such issue is alive at the date of the intestate's death, the widow shall take the same share of the estate as if the child had been living at that date.	If a child has died leaving children of his or her own, then the widow takes the same share she would have taken if the child had been alive. See Case 7 under Court Decisions.

INDIAN ACT, Section 48	EXPLANATION
(3) Notwithstanding subsections (1) and (2), (a) where in any particular case the Minister is satisfied that any children of the deceased will not be adequately provided for, he may direct that all or any part of the estate that would otherwise go to the widow shall go to the children, and	Regardless of the above, if the Minister thinks that the children of the Indian who dies without a will will not be properly looked after, then he can say that all or a part of the estate that would usually go to the widow will go to the children instead.
(b) the Minister may direct that the widow shall have the right, during her widowhood, to occupy any lands on a reserve that were occupied by her deceased husband at the time of his death.	The Minister can also say that the widow may, as long as she remains a widow, live on any reserve lands that her husband had at the time of his death. See Case 150 under Court Decisions on this section.
(4) Where an intestate dies leaving issue his estate shall be distributed, subject to the rights of the widow, if any, per stirpes among such issue.	When an Indian dies leaving children, their share of the property is divided up equally among them. If one child is dead, the share that the child would have received is divided equally among that child's children.
(5) Where an intestate dies leaving no widow or issue his estate shall go to his father and mother in equal shares if both are living, but if either of them is dead the estate shall go to the survivor.	When an Indian dies leaving no widow or children, then his estate goes to his parents in equal shares if they are both alive, but if one is dead, then the whole estate goes to the one who is still alive.

INDIAN ACT, Section 48	EXPLANATION
(6) Where an intestate dies leaving no widow or issue or father or mother his estate shall go to his brothers and sisters in equal shares, and if any brother or sister is dead the children of the deceased brother or sister shall take the share their parent would have taken if living, but where the only persons entitled are children of deceased brothers and sisters, they shall take per capita.	When an Indian dies leaving no widow, children, or parents, his estate is divided equally among his brothers and sisters. If any brother or sister is dead, the children of that brother or sister take the share that their parent would have taken. If all the brothers and sisters are dead, all their children share the whole estate equally.
(7) Where an intestate dies leaving no widow, issue, father, mother, brother or sister, and no children of any deceased brother or sister, his estate shall go to his next-of-kin.	When an Indian dies leaving no widow, children, father, mother, brother or sister, or children of any brother or sister who has died, then his estate shall go to his next-of-kin (i.e., next closest relative).
(8) Where the estate goes to the next-of-kin it shall be distributed equally among the next-of-kin of equal degree of consanguinity to the intestate and those who legally represent them, but in no case shall representation be admitted after brothers' and sisters' children, and any interest in land in a reserve shall vest in Her Majesty for the benefit of the band if the nearest of kin of the intestate is more remote than a brother or sister.	When the estate goes to the next-of-kin, it is divided up equally among the next-of-kin who are equally close relatives to the Indian who has died. Where one of the next-of-kin has died, then his share goes to whoever has the legal right to it, provided they are not more distantly related than brothers' or sisters' children. Any land goes back to the band if the nearest kin is more distant than a brother or sister.

INDIAN ACT, Section 48	EXPLANATION
(3) Notwithstanding subsections (1) and (2),	Regardless of the above, if the Minister thinks that the children of the Indian who dies without a will will not be properly looked after, then he can say that all or a part of the estate that would usually go to the widow will go to the children instead.
(a) where in any particular case the Minister is satisfied that any children of the deceased will not be adequately provided for, he may direct that all or any part of the estate that would otherwise go to the widow shall go to the children, and	
(b) the Minister may direct that the widow shall have the right, during her widowhood, to occupy any lands on a reserve that were occupied by her deceased husband at the time of his death.	The Minister can also say that the widow may, as long as she remains a widow, live on any reserve lands that her husband had at the time of his death. See Case 150 under Court Decisions on this section.
(4) Where an intestate dies leaving issue his estate shall be distributed, subject to the rights of the widow, if any, *per stirpes* among such issue.	When an Indian dies leaving children, their share of the property is divided up equally among them. If one child is dead, the share that the child would have received is divided equally among that child's children.
(5) Where an intestate dies leaving no widow or issue his estate shall go to his father and mother in equal shares if both are living, but if either of them is dead the estate shall go to the survivor.	When an Indian dies leaving no widow or children, then his estate goes to his parents in equal shares if they are both alive, but if one is dead, then the whole estate goes to the one who is still alive.

INDIAN ACT, Section 48	EXPLANATION
(6) Where an intestate dies leaving no widow or issue or father or mother his estate shall go to his brothers and sisters in equal shares, and if any brother or sister is dead the children of the deceased brother or sister shall take the share their parent would have taken if living, but where the only persons entitled are children of deceased brothers and sisters, they shall take per capita.	When an Indian dies leaving no widow, children, or parents, his estate is divided equally among his brothers and sisters. If any brother or sister is dead, the children of that brother or sister take the share that their parent would have taken. If all the brothers and sisters are dead, all their children share the whole estate equally.
(7) Where an intestate dies leaving no widow, issue, father, mother, brother or sister, and no children of any deceased brother or sister, his estate shall go to his next-of-kin.	When an Indian dies leaving no widow, children, father, mother, brother or sister, or children of any brother or sister who has died, then his estate shall go to his next-of-kin (i.e., next closest relative).
(8) Where the estate goes to the next-of-kin it shall be distributed equally among the next-of-kin of equal degree of consanguinity to the intestate and those who legally represent them, but in no case shall representation be admitted after brothers' and sisters' children, and any interest in land in a reserve shall vest in Her Majesty for the benefit of the band if the nearest of kin of the intestate is more remote than a brother or sister.	When the estate goes to the next-of-kin, it is divided up equally among the next-of-kin who are equally close relatives to the Indian who has died. Where one of the next-of-kin has died, then his share goes to whoever has the legal right to it, provided they are not more distantly related than brothers' or sisters' children. Any land goes back to the band if the nearest kin is more distant than a brother or sister.

INDIAN ACT, Section 48	EXPLANATION
(9) For the purposes of this section, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.	For the purpose of this section, how closely related a person was to the Indian who died is worked out by counting upward to the nearest person who was an ancestor to them both and then down to the relative.
(10) Descendants and relatives of the intestate begotten before his death but born thereafter shall inherit as if they had been born in the lifetime of the intestate and had survived him.	Descendants and relatives of the Indian who were conceived but not yet born when he died shall inherit as if they had been born during the Indian's lifetime.
(11) All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.	If an Indian's will does not cover his whole estate, the remainder is distributed as if the Indian had died without a will and had no other estate.
(12) No widow is entitled to dower in the land of her deceased husband dying intestate, and no husband is entitled to an estate by curtesy in the land of his deceased wife so dying, and there is no community of real or personal property situated on a reserve.	The laws of dower, curtesy and community of property do not apply to Indians. These laws are the traditional laws in English Canada and French Canada that give one spouse certain legal rights to the property owned by the other spouse. This section has not been updated to refer specifically to the newer provincial laws dealing with the division of marital property.
(13) Illegitimate children and their issue shall inherit from the mother as if the children were legitimate, and shall inherit as if the children were legitimate, through the mother, if dead, any real or personal property that she would have taken, if living, by gift, devise or descent from any other person.	Illegitimate children and their children shall be treated as if they were legitimate. In cases where the mother has died, what she would have received goes to her children, both legitimate and illegitimate.

INDIAN ACT, Section 48	EXPLANATION
(14) Where an intestate, being an illegitimate child, dies leaving no widow or issue, his estate shall go to his mother, if living, but if the mother is dead his estate shall go to the other children of the same mother in equal shares, and where any child is dead the children of the deceased child shall take the share their parent would have taken if living; but where the only persons entitled are children of deceased children of the mother, they shall take per capita.	Where an illegitimate Indian dies and leaves no widow or children, then his whole estate shall go to his mother. If his mother is dead, his estate shall go to all the children of his mother in equal shares. Where any child is dead, the children of the deceased child shall take the share their parent would have taken if he or she had been alive. If the only people alive to take shares are the children's children, then the whole estate shall be divided equally among them.
(15) This section applies in respect of an intestate woman as it applies in respect of an intestate male, and for the purposes of this section the word "widow" includes "widower".	Section 48 applies to both women and men who die without wills; where the word "widow" appears, the word "widower" may be substituted for it.
(16) In this section "child" includes a legally adopted child and a child adopted in accordance with Indian custom. R.S., c.149, s.48; 1956, c.40, s.13.	In section 48 "child" includes a legally adopted child and a child adopted under Indian custom.

COURT DECISIONS

Case 150. In Re Williams Estate, a 1960 decision, the British Columbia Supreme Court ruled that neither a deceased Indian's illegitimate daughter nor his estranged wife, who was living in adultery with another man at the time of his death contrary to the provisions of a provincial law, can receive any share of the estate of that Indian who died without leaving a will. Sections 48 and 50 of the Indian Act do not form a complete code with respect to the estate of the Indian dying intestate. Paragraph 48(3)(a) does not apply to an illegitimate child, so the words "children of the deceased" are applicable only to legitimate children.

Case 47. In Re Katie's Adoption, a 1961 decision, the N.W.T. Territorial Court ruled that an adoption by native custom is as effective as if it had been made under the relevant provincial law.

Case 10. In Re Beaulieu's Adoption, a 1969 decision, the N.W.T. Territorial Court ruled that since Indians have from time immemorial practised and recognized custom adoption, they should not be forced to abandon the practice, and the Courts should recognize it as just as valid as if formally made under the provisions of a provincial law.

Case 70. In Nelson v. Children's Aid Society of Eastern Man., a 1975 decision, the Manitoba Court of Appeal stated that while subsections 2(1) and 48(16) refer to adoption of a child by an Indian, the Indian Act does not deal with the adoption of Indian children by non-Indians. An Indian child, made subject to a permanent order of custody under the provincial Child Welfare Act or of adoption under the provincial Adoption Act, will continue to have whatever rights any Indian child has under the Indian Act. The Court, then, will not interfere with adoption and custody orders made in favour of certain non-Indians.

Case 7. In Barlow v. R., a 1978 decision, the Federal Court, Trial Division, ruled that evidence as to who would traditionally become entitled to a deceased Indian's medallion and personal documents when that Indian died without leaving a will was not sufficient to allow a Court to make a declaration of ownership of such articles. Evidence of the value of the estate was therefore required in order to distribute that Indian's estate.

INDIAN ACT, Section 49	EXPLANATION
49. A person who claims to be entitled to possession or occupation of lands in a reserve by devise or descent shall be deemed not to be in lawful possession or occupation of that land until the possession is approved by the Minister. R.S., c.149, s.49.	A person who claims that he has a right to a piece of reserve land as his share of the estate of a deceased Indian does not lawfully get the piece of land until the Minister agrees.

COURT DECISIONS

Case 150. In Re Williams Estate and Trustee Act, a 1960 decision, the British Columbia Supreme Court ruled that sections 48 to 50 of the Indian Act do not form a complete code with respect to the estate of an Indian who has died without a will. The provincial Administration Act, being a law of general application, which states that a wife living in adultery at the time of her husband's death takes no share in his estate if there is no will, is applicable to Indians.

INDIAN ACT, Section 50	EXPLANATION
50. (1) A person who is not entitled to reside on a reserve does not by devise or descent acquire a right to possession or occupation of land in that reserve.	A person who does not have the right to live on a reserve cannot get the rights to a piece of reserve land from the estate of a deceased Indian.
(2) Where a right to possession or occupation of land in a reserve passes by devise or descent to a person who is not entitled to reside on a reserve, that right shall be offered for sale by the superintendent to the highest bidder among persons who are entitled to reside on the reserve and the proceeds of sale shall be paid to the devisee or descendant, as the case may be.	If, under the will of a deceased Indian, the rights to a piece of reserve land go to a person who does not have the right to live on the reserve, then the Department of Indian Affairs and Northern Development shall sell the land to the highest bidder among people who have the right to live on the reserve and give the money to the person who had the rights to the land but did not have the right to live on it.
(3) Where no tender is received within six months or such further period as the Minister may direct after the date when the right to possession or occupation is offered for sale under subsection (2), the right shall revert to the band free from any claim on the part of the devisee or descendant, subject to the payment, at the discretion of the Minister, to the devisee or descendant, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.	If no bid is received within six months (or longer if the Minister says so) from the date the land is put up for bids, then the land goes back to the whole band. The Minister can, if he wishes, pay the person who inherited the land but was not entitled to live on it whatever amount he thinks is proper for any buildings or fences on the land.
(4) The purchaser of a right to possession or occupation of land under subsection (2) shall be deemed not to be in lawful possession or occupation of the land until the possession is approved by the Minister. R.S., c.149, s.50.	A person who bids for the land does not get the legal rights to it until the Minister agrees.

Case 150. In Re Williams Estate and Trustee Act, a 1960 decision, the British Columbia Supreme Court ruled that sections 48 to 50 of the Indian Act do not form a complete code with respect to the estate of an Indian who has died without a will. The provincial Administration Act, being a law of general application, which states that a wife living in adultery at the time of her husband's death takes no share in his estate if he has left no will, is applicable to Indians.

Case 89. In R. v. Devereux, a 1965 decision, the Supreme Court of Canada decided that a non-Indian must give up possession of a farm on reserve land that had been leased to him by an Indian widow. The widow died before the expiration of the lease, but left her rights in the farm to that non-Indian in her will. At the expiration of the lease, the right in the farm was sold to another Indian. The Crown, at the request of that Indian, granted two consecutive one-year permits to the non-Indian. The rights of that non-Indian upon the expiration of his second permit were governed by section 50. The procedure of selling to the highest bidder among the people entitled to reside on the reserve was followed, and the non-Indian's only rights were to receive the proceeds (even if on an instalment basis) of this sale.

INDIAN ACT, Section 51	EXPLANATION
MENTALLY INCOMPETENT INDIANS	
51. (1) Subject to this section, all jurisdiction and authority in relation to the property of mentally incompetent Indians is vested exclusively in the Minister.	The Minister has complete control over the property of an Indian who is "mentally incompetent". "Mentally incompetent" essentially means the person is insane, senile, retarded, or otherwise incapable of managing his own affairs.
(2) Without restricting the generality of subsection (1), the Minister may	If he wishes, the Minister can appoint somebody to look after the mentally incompetent Indian's property.
(a) appoint persons to administer the estates of mentally incompetent Indians;	The Minister can sell, lease or mortgage the Indian's property in order to pay his debts and the cost of looking after him.
(b) order that any property of a mentally incompetent Indian shall be sold, leased, alienated, mortgaged, disposed of or otherwise dealt with for the purpose of (i) paying his debts or engagements, (ii) discharging encumbrances on his property, (iii) paying debts or expenses incurred for his maintenance or otherwise for his benefit, or (iv) paying or providing for the expenses of future maintenance; and	The Minister can do whatever is needed to make sure the Indian's property is looked after.
(c) make such orders and give such directions as he considers necessary to secure the satisfactory management of the estates of mentally incompetent Indians.	

INDIAN ACT, Section 51	EXPLANATION
(3) The Minister may order that any property situated off a reserve and belonging to a mentally incompetent Indian shall be dealt with under the laws of the province in which the property is situated. R.S., c.149, s.51.	If the Indian has property that is not on the reserve, the Minister can order that the property be looked after under the relevant provincial law.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 52	EXPLANATION
GUARDIANSHIP	
52. The Minister may administer or provide for the administration of any property to which infant children of Indians are entitled, and may appoint guardians for such purpose. R.S., c.149, s.52.	If an Indian under the age of majority is entitled to some property (for example, he is left something in a will), the Minister can look after that property until the Indian reaches the age of majority or appoint a guardian to do it.

COURT DECISIONS

Case 23. In *Children's Aid Society* v. *Tom*, a 1982 decision, the Manitoba Court of Appeal ruled that an Indian band cannot apply to become the guardian of an Indian child under the provincial *Child Welfare Act*, because it is not a "child-caring agency" or a "person". The Courts have not, however, applied this principle in a situation where the child has inherited property.

INDIAN ACT, Section 53	EXPLANATION
MANAGEMENT OF RESERVES AND SURRENDERED LANDS	
53. (1) The Minister or a person appointed by him for the purpose may manage, sell, lease or otherwise dispose of surrendered lands in accordance with this Act and the terms of the surrender.	The Minister can manage, sell or lease surrendered lands, but he must comply with the provisions of the *Indian Act* and any terms or conditions that the band agreed to when it surrendered the land.
(2) Where the original purchaser of surrendered lands is dead and the heir, assignee or devisee of the original purchaser applies for a grant of the lands, the Minister may, upon receipt of proof in such manner as he directs and requires in support of any claim for the grant and upon being satisfied that the claim has been equitably and justly established, allow the claim and authorize a grant to issue accordingly.	Where the person who first arranged to buy surrendered lands dies, the Minister can grant the land to his heir.
(3) No person who is appointed to manage, sell, lease or otherwise dispose of surrendered lands or who is an officer or servant of Her Majesty employed in the Department may, except with the approval of the Governor in Council, acquire directly or indirectly any interest in surrendered lands. R.S., c.149, s.53.	No person who works for the Department of Indian Affairs and Northern Development can buy or lease surrendered land unless the federal cabinet agrees.

COURT DECISIONS

Case 5. In *A.- G. of Quebec* v. *A.- G. of Canada*, a 1920 decision, the Judicial Committee of the Privy Council ruled that when an Indian band surrendered part of a reserve, the province took control of the land and the Minister could not "manage, sell, lease or otherwise dispose of" the surrendered land.

To overcome the decision in Case 5, the federal government has made arrangements with various provinces to allow the federal government to manage surrendered lands as provided for in section 53(1). No such arrangements exist in Quebec or Prince Edward Island. For other provinces see the following list of documents.

Documents, statutes and agreements relating to the ownership and status of Indian reserves:

1. ONTARIO

(a) An Act for the settlement of certain questions between the Governments of Canada and Ontario respecting Indian Lands, (1891) 54-55 Vict.Ch.5 (Canada), (1891) 54 Vict.Ch.3 (Ontario).

(b) Agreement of 1894 re Treaty 3 Reserves, Document No. 353, Indian Treaties and Surrenders, Ottawa, King's Printer, 1912, Vol. III, p. 132 (reprinted in the Coles Canadiana Collection).

(c) Agreement of 1902 re Ontario Mining v. Seybold, Document No. 459, Indian Treaties and Surrenders, Ottawa, King's Printer, 1912, Vol.III, p.356 (reprinted in the Coles Canadiana Collection).

(d) Agreement of 1905 re Treaty 9, reprinted in the James Bay Treaty, Treaty No. 9, Ottawa, Queen's Printer, 1964, p. 25. This pamphlet is available from the Department of Indian Affairs and Northern Development.

(e) The Ontario Boundaries Extension Act, Statutes of Canada, 1912, Ch. 40.

(f) An Act to confirm the title of the Government of Canada to certain lands and Indian Lands, (1915) 5 Geo.V.,Ch.12 (Ontario). This statute deals with reserves in the Treaty 3 area.

(g) An Act for the settlement of certain questions between the Governments of Canada and Ontario respecting Indian Reserve Lands, (1924) 14 Geo.V.Ch.15 (Ontario), (1924) 14-15 Geo.V,Ch.48 (Canada).

2. QUEBEC

(a) The Quebec Boundaries Extension Act, Statutes of Canada, 1912, Ch.45.

(b) Report on the Territories occupied by the Indians in the Province of Quebec, Report by Paul-Emile Marquis, Legal Adviser, Department of Family and Social Welfare, Province of Quebec, October, 1965, unpublished, available from the Department of Indian Affairs and Northern Development, Ottawa.

3. ALBERTA, SASKATCHEWAN AND MANITOBA

(a) The Natural Resources Transfer Agreements, enacted as the British North America Act, 1930, R.S.C. 1970, Appendices, No. 25.

4. NEW BRUNSWICK AND NOVA SCOTIA

(a) An Act to confirm an Agreement between the Government of Canada and the Government of the Province of New Brunswick respecting Indian Reserves, 1959 Statutes of Canada, Ch. 47.

(b) An Act to confirm an Agreement between the Government of Canada and the Government of the Province of Nova Scotia respecting Indian Reserves, 1959 Statutes of Canada, Ch. 50.

5. BRITISH COLUMBIA

(a) The Terms of Union, Article 13, R.S.C. 1970, Appendices, No. 10.

(b) An Act to provide for the Settlement of Differences between the Governments of the Dominion and the Province respecting Indian Lands and Indian Affairs in the Province of British Columbia, (1919) 9 Geo.V,Ch.32 (British Columbia).

(c) An Act to provide for the Settlement of Differences between the Governments of the Dominion of Canada and the Province of British Columbia respecting Indian Lands and certain other Indian Affairs in the said Province, (1920) 10-11 Geo.V,Ch.51 (Canada).

(d) The British North America Act, 1930, R.S.C. 1970, Appendices, No.25. This statute gave force to a federal-provincial agreement reconveying the Railway Belt and the Peace River Block to the province.

(e) British Columbia Order in Council 1036, July 29, 1938. This document deals with reserves outside the Railway Belt and the Peace River Block. Order in Council 1036 has been modified by two subsequent provincial orders in council: November 28, 1961 and May 13, 1969.

(f) The British Columbia Indian Reserves Mineral Resources Act, 1943, Statutes of British Columbia, Ch.40; 1943-44, Statutes of Canada, Ch.19.

6. PRINCE EDWARD ISLAND

There are no statutes or agreements dealing with property rights in Indian reserves in Prince Edward Island.

Case 68. In Moses v. R., a 1979 decision, the British Columbia Court of Appeal ruled that a provision in Order in Council 1036 (item 5(e) in the above list), which allowed the province to resume one-twentieth of reserve lands in specific circumstances, was valid. This power of resumption had been a condition in the transfer of management power over reserve lands from the province to the federal government.

Case 118. In The Queen v. Smith, a 1980 decision, the Federal Court of Appeal decided that the federal Crown can maintain an action for trespass and possession of reserve lands surrendered to them in trust for sale in 1895 where those lands were not yet sold. That surrender served to extinguish the band's right to possession of such lands. They were now entitled only to the proceeds from the sale of those lands. The Crown was entitled to possession of the land upon paying the present persons in possession for any permanent improvements that were made to the land.

Case 79. In Re Enoch Decision, a 1981 decision, the Alberta Court of Appeal stated that where lands are surrendered in trust for leasing, the rights and interests of the band remain enforceable by the Minister under this section. The band retains the rights of a landlord through the agency of the Minister and the right to the future enjoyment of the property. Section 38 does not abrogate those powers and duties of the Minister that may arise out of the operation of this section, in that the Minister's continuing attention may be a qualification or condition of the surrender.

Case 41. In Guerin v. R., a 1982 decision, the Federal Court of Appeal stated that the surrender of reserve land "in trust to lease the same to such person(s) and upon such terms as the Government of Canada may deem most conducive to our welfare" in this case did not make the Crown a trustee or impose upon the Crown an equitable obligation, enforceable in the courts, to deal with the land in a certain manner. The use of the phrase "in trust" just emphasized the importance of the political or governmental responsibility for the land. The authority of the federal cabinet, set out in section 18, to determine whether a particular purpose for which land in a reserve was to be used was one for the use and benefit of the band was an indication that it was for the government, not the courts, to decide what was for the band's use and benefit. The band, then, could not sue the Crown for damages for "breach of trust" when surrendered lands were leased to a golf club by the Crown on terms not contemplated by the band.

INDIAN ACT, Section 54	EXPLANATION
54. Where surrendered lands have been agreed to be sold or otherwise disposed of and letters patent relating thereto have not issued, or where surrendered lands have been leased, the purchaser, lessee or other person having an interest in the surrendered lands may, with the approval of the Minister, assign his interest in the surrendered lands or a part thereof to any other person. R.S., c.149, s.54.	Where a person has arranged to buy or lease surrendered land, he can sell his rights to buy or lease the land to somebody else provided the Minister agrees.

COURT DECISIONS

Case 148. In Western Industrial Contractors Ltd. v. Sarcee Developments Ltd., a 1979 decision, the Alberta Supreme Court, Appellate Division, stated that a builder's lien may be filed against the leasehold interest of a development company in conditionally surrendered reserve lands without affecting the band's reversionary interest in that land. If such lands are unpatented Crown lands, the Registrar of the provincial Land Titles Office shall record the lien in the day book.

INDIAN ACT, Section 55	EXPLANATION
55. (1) There shall be kept in the Department a register, to be known as the Surrendered Lands Register, in which shall be entered particulars in connection with any lease or other disposition of surrendered lands by the Minister or any assignment thereof. (2) A conditional assignment shall not be registered. (3) Registration of an assignment may be refused until proof of its execution has been furnished. (4) An assignment registered under this section is valid against an unregistered assignment or an assignment subsequently registered. R.S., c.149, s.55.	The Department of Indian Affairs and Northern Development shall keep a record to be known as the "Surrendered Lands Register". In this record, the details of all deals involving surrendered lands are to be recorded. Deals involving surrendered lands that are recorded in the Surrendered Lands Register will be considered valid if a conflict arises concerning an unrecorded deal or deals recorded later.

COURT DECISIONS

Case 72. In Palm Dairies Ltd. v. R., a 1978 decision, the Federal Court of Canada, Trial Division, ruled that while it did not have the authority to direct the registration in the Surrendered Lands Register of a builders' lien and certificate of Lis Pendens against a development company's leasehold interest in conditionally surrendered reserve lands, the Plaintiff may have a remedy in another jurisdiction. The company owed the Plaintiff a sum of money for services rendered in relation to the construction of water distribution and sewage collection systems. In obiter dictum, the Court stated that, in any event, section 55 does not encompass a builder's lien. The Registrar cannot register a lien in that Register where there is no specific authority for it. The provincial Builders' Lien Act was held to be non-applicable to Indian reserve lands.

Case 148. See case 148 as detailed in Section 54. This case arose as a result of the recommendation of the Federal Court in Case 72.

INDIAN ACT, Section 56	EXPLANATION
56. Where an assignment is registered there shall be endorsed on the original copy thereof a certificate of registration signed by the Minister or by an officer of the Department authorized by him to sign such certificates. R.S., c.149, s.56.	When a deal is recorded, a departmental official has to write a Certificate of Registration on the contract.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 57	EXPLANATION
57. The Governor in Council may make regulations	The Government can make regulations that:
(a) authorizing the Minister to grant licences to cut timber on surrendered lands, or, with the consent of the council of the band, on reserve lands;	(a) give the Minister power to grant timber licences on surrendered lands (without the consent of the band) and on reserve lands (with the consent of the band council). (See Indian Timber Regulations, C.R.C. 1978, c.961);
(b) imposing terms, conditions and restrictions with respect to the exercise of rights conferred by licences granted under paragraph (a);	(b) give instructions on how the timber licences can be used and how long they are valid;
(c) providing for the disposition of surrendered mines and minerals underlying lands in a reserve;	(c) provide for the sale and mining of surrendered minerals on reserve lands. (See Indian Mining Regulations, C.R.C. 1978, c.956);
(d) prescribing the penalty not exceeding one hundred dollars or imprisonment for a term of three months, or both, that may be imposed on summary conviction for violation of any regulation made under this section; and	(d) establish the punishment for breaking the regulations. The punishment is not to be more than a $100 fine or three months in jail, or both; and
(e) providing for the seizure and forfeiture of any timber or minerals taken in violation of any regulation made under this section. R.S., c.149, s.57.	(e) provide for the confiscation of timber or minerals taken against the law.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 58	EXPLANATION
58. (1) Where land in a reserve is uncultivated or unused, the Minister may, with the consent of the council of the band,	Where reserve land is uncultivated and unused, the Minister can, with the consent of the band council:
(a) improve or cultivate such land and employ persons therefor, and authorize and direct the expenditure of so much of the capital funds of the band as he considers necessary for such improvement or cultivation including the purchase of such stock, machinery or material or for the employment of such labour as the Minister considers necessary;	(a) establish a farm or ranch on the land using band capital funds,
(b) where the land is in the lawful possession of any individual, grant a lease of such land for agricultural or grazing purposes or for any purpose that is for the benefit of the person in possession; and	(b) if the land is in the lawful possession of a band member, lease the land without that person's consent, and
(c) where the land is not in the lawful possession of any individual, grant for the benefit of the band a lease of such land for agricultural or grazing purposes.	(c) if the land is not in the lawful possession of a band member, lease the land for farming or ranching purposes. No surrender is required for leases under this section. See Case 65 under Court Decisions on this Section.

INDIAN ACT, Section 58	EXPLANATION
(2) Out of the proceeds derived from the improvement or cultivation of lands pursuant to paragraph (1)(b), a reasonable rent shall be paid to the individual in lawful possession of the lands or any part thereof, and the remainder of the proceeds shall be placed to the credit of the band, but if improvements are made on the lands occupied by an individual, the Minister may deduct the value of such improvements from the rent payable to such individual under this subsection.	When reserve land is leased under section 58(1)(b) part of the rent paid under the lease will go to the individual band member who has rights to possess the land and part will go to the band. If buildings or fences are added to the land under the lease, the individual band member will get less of the rent (because these improvements to the land will belong to the individual band member at the end of the lease).
(3) The Minister may lease for the benefit of any Indian upon his application for that purpose, the land of which he is lawfully in possession without the land being surrendered.	If land is in the lawful possession of an individual band member it may be leased without a surrender if both the member and the Minister agree. See Cases 89 and 141 under Court Decisions on this section.
(4) Notwithstanding anything in this Act, the Minister may, without a surrender (a) dispose of wild grass or dead or fallen timber, and (b) with the consent of the council of the band, dispose of sand, gravel, clay and other non-metallic substances upon or under lands in a reserve, or, where such consent cannot be obtained without undue difficulty or delay, may issue temporary permits for the taking of sand, gravel, clay and other	The Minister can sell wild grass or dead or fallen timber without a surrender and without the band council's consent. With the consent of the band council, the Minister can sell sand, gravel, clay, and other non-metallic material from reserve land. If the consent of the band council would be too difficult to get or would take too long, the Minister can give temporary permits to people to take this material from the reserve. The temporary permits cannot be renewed unless the band council agrees. The moneys from these sales shall be paid into the band's funds or divided between the band and the Indian in lawful

INDIAN ACT, Section 58	EXPLANATION
non-metallic substances upon or under lands in a reserve, renewable only with the consent of the council of the band,	possession of the particular land, in whatever shares the Minister thinks is correct.
and the proceeds of such transactions shall be credited to band funds or shall be divided between the band and the individual Indians in lawful possession of the lands in such shares as the Minister may determine. R.S., c.149, s.58; 1956, c.40, s.14.	

COURT DECISIONS

Case 89. In *R. v. Devereux*, a 1965 decision, the Supreme Court of Canada decided that a non-Indian could continue to live on a farm on reserve land leased to him by the Crown at the request of an Indian widow for the remainder of the term of the lease when the widow died two years prior to the expiration of the lease. The widow cannot will her rights of possession of the farm to the non-Indian. At the expiration of the lease, the right in the land must be sold to a person entitled to live on the reserve. There are only two ways the non-Indian can remain lawfully in possession: (1) by lease made by the Minister for the benefit of any Indian under subsection 58(3), or (2) by permit under subsection 29(2).

Case 78. In *Prov. Mun. Assessor* v. *Harrison*, a 1971 decision, the Manitoba Court of Queen's Bench ruled that while the lands of Indian reserves to which the Crown in right of Canada holds the legal title are exempt from all taxation, the "right, interest or estate in such land" is liable to tax. It is the interest of the private person, such as the non-Indian lessee of Indian reserve lands lying within the boundaries of a municipality, and not the Crown that is being assessed and taxed under the *Municipal Assessment Act*.

Case 65. In Mintuck v. Valley River Band, a 1977 decision, the Manitoba Court of Appeal ruled that a band council cannot cancel by resolution a 10-year farming lease between a treaty Indian and the federal Crown and retake possession of that reserve land, even where that band has been the beneficiary of a percentage of the proceeds of the crop during the last 5 years of that lease. The treaty Indian was forced to cease farming the land because of harassment by individual members of the band. The band council had a duty to ensure that nothing was done to interfere with the treaty Indian's farming. Since it accepted the acts of its members and officially tried to cancel the lease, it was liable for damages for intimidation, unlawful interference, and trespass.

Case 141. In Re Toussowasket Enterprises Ltd., a 1982 decision, the British Columbia Supreme Court ruled that permission from the Minister under section 28 is not required to sublease a trailer park on reserve land leased under subsection 58(3). The rentalsman under the provincial Residential Tenancy Act did not have jurisdiction to make any order on the basis of any tenancy agreement that would affect Indian land or the use of Indian land. A termination notice given to a tenant does not affect the use of Indian land and is therefore effective.

INDIAN ACT, Section 59	EXPLANATION
59. The Minister may, with the consent of the council of a band, (a) reduce or adjust the amount payable to Her Majesty in respect of a sale, lease or other disposition of surrendered lands or a lease or other disposition of lands in a reserve or at the rate of interest payable thereon, and (b) reduce or adjust the amount payable to the band by an Indian in respect of a loan made to the Indian from band funds. R.S., c.149, s.59.	If the band council agrees, the Minister can alter the amount to be paid for the sale or lease of reserve land. If the band council agrees, the Minister can also alter the amount to be paid to the band by an Indian who has borrowed money from his band's funds.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 60	EXPLANATION
60. (1) The Governor in Council may at the request of a band grant to the band the right to exercise such control and management over lands in the reserve occupied by that band as the Governor in Council considers desirable. (2) The Governor in Council may at any time withdraw from a band a right conferred upon the band under subsection (1). R.S., c.149, s.60.	If a band asks for it, the government can give the band the right to the amount of control over its lands that the government thinks is desirable. The government can also cancel any rights it gives under this section.

COURT DECISIONS

Case 73. In *Re Park Mobile Homes Sales Ltd. and Le Greely*, a 1978 decision, the British Columbia Court of Appeal ruled that the provincial *Landlord and Tenant Act, 1974*, which restricts the right of a landlord to increase rent for residential premises, applies to a month-to-month tenancy of a pad located in a mobile home park on leased Indian reserve lands where the landlord and the tenant are non-Indians.

Case 53. In *Leonard* v. *Gottfriedson*, a 1980 decision, the British Columbia Supreme Court decided that where the band does not have a right of control under this section, it cannot transfer a parcel of reserve land to a band member without holding a duly convened meeting and passing a formal resolution. The resolution cannot simply be individually consented to, even if written consent is obtained.

INDIAN ACT, Section 61	EXPLANATION
MANAGEMENT OF INDIAN MONEYS 61. (1) Indian moneys shall be expended only for the benefit of the Indians or bands for whose use and benefit in common the moneys are received or held, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which Indian moneys are used or are to be used is for the use and benefit of the band.	This section, dealing with band funds, is in the same terms as section 18(1) dealing with reserve lands. It repeats language from the definitions of "band" and "Indian moneys" in section 2(1), describing band funds as held for the "use and benefit" of a band. It adds that the moneys are held for the "use and benefit in common" of the Indians or bands on whose behalf the moneys are received. The section then provides that, subject to the Act and the terms of any treaty or surrender, the federal cabinet can decide whether any particular use of band funds is for the use and benefit of a band. Many decisions about band funds are, however, made by the Minister, not the full cabinet (see sections 64 to 68). The major role of the cabinet is to establish interest rates (sections 61(2)) and to give bands control and management of revenue moneys (section 69). Section 61(1) may have been intended to avoid breach of trust lawsuits, or to prevent a challenge to any particular expenditure. The exact purpose of the section is not clear and there is no pattern of use of the power to declare a use of band funds as being for the "use and benefit" of a band.

INDIAN ACT, Section 61	EXPLANATION
(2) Interest upon Indian moneys held in the Consolidated Revenue Fund shall be allowed at a rate to be fixed from time to time by the Governor in Council. R.S., c.149, s.61.	The government shall fix the interest rate to be paid on Indian moneys held by it.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 62	EXPLANATION
62. All Indian moneys derived from the sale of surrendered lands or the sale of capital assets of a band shall be deemed to be capital moneys of the band and all Indian moneys other than capital moneys shall be deemed to be revenue moneys of the band. R.S., c.149, s.62.	All Indian moneys from the sale of reserve land or capital assets (such as a building) shall be considered the capital moneys of the band, and all other Indian moneys shall be considered the revenue moneys of the band. (This distinction between capital and revenue moneys becomes important in sections 64, 65 and 66.)

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 63	EXPLANATION
63. Notwithstanding the *Financial Administration Act*, where moneys to which an Indian is entitled are paid to a superintendent under any lease or agreement made under this Act, the superintendent may pay the moneys to the Indian. R.S., c.149, s.63.	Even though the *Financial Administration Act* says otherwise, if moneys to which an Indian is entitled under a lease or agreement are paid to a superintendent, then he can pay the moneys directly to the Indian.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 64	EXPLANATION
64. With the consent of the council of a band, the Minister may authorize and direct the expenditure of capital moneys of the band	With the consent of the band council, the Minister can spend the capital moneys of the band in any of the following ways:
(a) to distribute per capita to the members of the band an amount not exceeding fifty per cent of the capital moneys of the band derived from the sale of surrendered lands;	(a) up to half the money from the sale of surrendered land can be shared equally among band members; See Case 76 under Court Decisions on this Section.
(b) to construct and maintain roads, bridges, ditches and water courses on the reserves or on surrendered lands;	(b) to build roads, bridges and ditches on reserves or surrendered lands;
(c) to construct and maintain outer boundary fences on reserves;	(c) to build a boundary fence around the reserve;
(d) to purchase land for use by the band as a reserve or as an addition to a reserve;	(d) to buy a reserve or extra reserve land for the band;
(e) to purchase for the band the interest of a member of the band in lands on a reserve;	(e) to buy a piece of reserve land owned by a band member for the band;
(f) to purchase livestock and farm implements, farm equipment, or machinery for the band;	(f) to buy livestock and farm tools and equipment for the band;
(g) to construct and maintain on or in connection with a reserve such permanent improvements or works as in the opinion of the Minister will be of permanent value to the band or will constitute a capital investment;	(g) to build facilities (for example, a water dam) that the Minister thinks will be of long-lasting value to the band or will be a good investment;

INDIAN ACT, Section 64	EXPLANATION
(h) to make to members of the band, for the purpose of promoting the welfare of the band, loans not exceeding one-half of the total value of (i) the chattels owned by the borrower, and (ii) the land with respect to which he holds or is eligible to receive a Certificate of Possession, and may charge interest and take security therefor;	(h) to make loans to band members for the good of the band. The loan to a band member must not be more than the value of 1/2 of all his belongings and 1/2 of his piece of reserve land. The Minister can charge interest on the loan and use the band member's belongings and land as security to ensure he repays the loan;
(i) to meet expenses necessarily incidental to the management of lands on a reserve, surrendered lands and any band property;	(i) to pay the cost of managing reserve land, surrendered land or band property;
(j) to construct houses for members of the band, to make loans to members of the band for building purposes with or without security and to provide for the guarantee of loans made to members of the band for building purposes; and	(j) to build houses for members of the band, to make loans to band members so that they can build houses, or to guarantee any loans made to members of the band for building purposes; and
(k) for any other purpose that in the opinion of the Minister is for the benefit of the band. R.S., c.149, s.64; 1956, c.40, s.15.	(k) finally, the Minister can spend the band's capital moneys for any purpose that he thinks is for the benefit of the band.

Case 76. In Peterson Livestock Ltd. v. Fox, a 1982 decision, the Alberta Court of Appeal ruled that a receiver cannot be appointed to handle moneys from a sale of interests in reserve land expected to be paid to the Indian debtor from time to time under this subsection. The creditor's Affidavit did not show that the Indian debtor possessed an asset that would be available for execution if legal impediments were removed, that there was a present debt due and owing to the debtor, and that the Minister under this subsection had authorized and directed such a distribution of moneys. Future rents that were not yet due and owing could not be made the subject of execution. Moreover, the mere expectation of a gratuitous distribution by the Minister is not a case for equitable execution.

INDIAN ACT, Section 65	EXPLANATION
65. The Minister may pay from capital moneys	The Minister can use the capital moneys of a band to:
(a) compensation to an Indian in an amount that is determined in accordance with this Act to be payable to him in respect of land compulsorily taken from him for band purposes, and	(a) pay an Indian who has had his land taken from him for band purposes;
(b) expenses incurred to prevent or suppress grass or forest fires or to protect the property of Indians in cases of emergency. R.S., c.149, s.65.	(b) pay the costs of preventing or fighting grass or forest fires, and pay the cost of looking after the property of Indians in cases of emergency.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 66	EXPLANATION
66. (1) With the consent of the council of a band, the Minister may authorize and direct the expenditure of revenue moneys for any purpose that in his opinion will promote the general progress and welfare of the band or any member of the band.	With the consent of the band council, the Minister can spend revenue moneys of the band for any purpose he thinks will be for the good of the band or any member of it.
(2) The Minister may make expenditures out of the revenue moneys of the band to assist sick, disabled, aged or destitute Indians of the band and to provide for the burial of deceased indigent members of the band and to provide for the payment of contributions under the Unemployment Insurance Act on behalf of employed persons who are paid in respect of their employment out of moneys of the band.	The Minister can spend the revenue moneys of the band to help sick, old or needy Indians of the band and to bury penniless members of the band. The Minister can make payments for Unemployment Insurance for people who are employed and paid by the band.
(3) The Minister may authorize the expenditure of revenue moneys of the band for all or any of the following purposes, namely:	The Minister can allow the band council to spend the band's revenue money for any of the following purposes:
(a) for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves;	(a) to destroy weeds and pests on reserves;
(b) to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable;	(b) to fight the spread of diseases on reserves;

INDIAN ACT, Section 66	EXPLANATION
(c) to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof;	(c) for the inspection of buildings on reserves and their destruction or repair;
(d) to prevent overcrowding of premises on reserves used as dwellings;	(d) to stop overcrowding of reserve houses;
(e) to provide for sanitary conditions in private premises on reserves as well as in public places on reserves; and	(e) to provide for clean and hygienic conditions in houses and public places on reserves; and
(f) for the construction and maintenance of boundary fences. R.S., c.149, s.66; 1956, c.40, s.16.	(f) for boundary fences;

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 67	EXPLANATION
67. Where money is expended by Her Majesty for the purpose of raising or collecting Indian moneys, the Minister may authorize the recovery of the amount so expended from the moneys of the band. 1956, c.40, s.17.	When the government has to spend money to collect Indian moneys, it can get back the money it has spent from the band's money.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 68	EXPLANATION
68. (1) Where the Minister is satisfied that a male Indian	When the Minister believes that an Indian man has:
(a) has deserted his wife or family without sufficient cause,	(a) left his wife or family without a good reason, or
(b) has conducted himself in such a manner as to justify the refusal of his wife or family to live with him, or	(b) carried on in such a way that his wife or family cannot be expected to live with him, or
(c) has been separated by imprisonment from his wife and family,	(c) been separated from his wife and family due to the fact that he is in jail,
he may order that payments of any annuity or interest money to which that Indian is entitled shall be applied to the support of the wife or family or both the wife and family of that Indian.	the Minister can order that any money to which that Indian is entitled be used to look after his wife and family.
(2) Where the Minister is satisfied that a female Indian has deserted her husband or family, he may order that payments of any annuity or interest money to which that Indian is entitled shall be applied to the support of her family.	When the Minister believes an Indian woman has left her husband or family, it can order that any money to which she is entitled be used to look after her family.
(3) Where the Minister is satisfied that one or both of the parents of an illegitimate child is an Indian, he may stop payments out of any annuity or interest moneys to which either or both of the parents would otherwise be entitled and apply the moneys to the support of the child, but not so as to prejudice the welfare of any legitimate child of either Indian. R.S., c.149, s.67.	If the Minister believes that at least one parent of an illegitimate child is an Indian, it can use money which that parent has a right to, to look after the child. However, the Minister will not do this if it means that a legitimate child of that Indian is not going to be properly looked after.

Case 14. In Black Plume v. Black Plume, a 1970 decision, the Alberta Family Court ruled that while an Indian mother deserted by her Indian husband has certain rights under this section, she also has certain civil rights under the provincial Domestic Relations Act. This section does not prevent the Indian mother from applying for maintenance for her children. The Family Court has jurisdiction.

Case 143. In Two-Axe v. Caughnawaga Band Council, a 1977 decision, the Quebec Superior Court decided that, in family matters, the existing rule is that illegitimate children have no rights other than those set out by way of exception, such as in subsection 48(13), 48(14), and 68(3).

Case 6. In Re Baptiste, a 1979 decision, the Alberta Court of Queen's Bench decided to enforce an agreement made by an Indian husband under the provisions of the provincial Maintenance and Recovery Act to provide for the maintenance, care and education of his two illegitimate children and for the expenses of their Indian mother related to her pregnancy and the birth of the children. Under subsection 68(3), the Minister can divert only "annuity or interest moneys" to which either or both parents would be entitled. The Minister is not given any wider power to attach, recover or divert funds payable to the parents from other sources. This section, therefore, does not make provision for the expenses related to the pregnancy of the mother, the birth of the child, or the maintenance of the child from all the father's resources. This provincial Act and any agreements made under it are applicable to Indians on reserves and are valid, except that it cannot in any way relate to the "annuity or interest moneys" payable to the Indian parents by the Minister.

Case 58. In Re Martin and Chapman, a 1979 decision, the Federal Court of Canada, Trial Division, stated that a general reading of the Act shows clearly that Parliament has been careful at all times, in stating its intention, to distinguish legitimate from illegitimate children. Under this section, there are rules respecting child support, separate from those enacted for children in general, dealing specifically with illegitimate children.

INDIAN ACT, Section 69	EXPLANATION
69. (1) The Governor in Council may by order permit a band to control, manage and expend in whole or in part its revenue moneys and may amend or revoke any such order.	The Government can allow a band to have control of its revenue money. It can also take such control away.
(2) The Governor in Council may make regulations to give effect to subsection (1) and may declare therein the extent to which this Act and the Financial Administration Act shall not apply to a band to which an order made under subsection (1) applies. R.S., c.149, s.68.	The Government can make regulations, dealing with the situation where a band has control of its revenue moneys, outlining the extent to which the Indian Act and the Financial Administration Act do not apply.
	(See Indian Bands Revenue Moneys Regulations, C.R.C. 1978, C.953, as am. S.O.R./78-523, S.O.R./78-773, S.O.R./78-914, S.O.R./78-934, S.O.R./79-428, S.O.R./80-157, S.O.R./80-178, S.O.R./80-896, S.O.R./80-897, S.O.R./80-898, S.O.R./80-899, S.O.R./81-314, S.O.R./81-692, S.O.R./82-216.)

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 70	EXPLANATION
LOANS TO INDIANS	
70. (1) The Minister of Finance may from time to time authorize advances to the Minister out of the Consolidated Revenue Fund of such sums of money as the Minister may require to enable him	Appropriation Act No. 1, 1970 (vote L53b) established new provisions for loans to Indians. Regulations were enacted under the Appropriation Act in 1972. The Appropriation Act waives the provisions of section 89 of the Indian Act for any loans made pursuant to it. It allows for loans, to Indians or non-Indians, designed to contribute to the economic development of Indians. In certain circumstances the regulations provide for a ministerial guarantee of loans.
(a) to make loans to bands, groups of Indians or individual Indians for the purchase of farm implements, machinery, livestock, motor vehicles, fishing equipment, seed grain, fencing materials, materials to be used in native handicrafts, any other equipment, and gasoline and other petroleum products, or for the making of repairs or the payment of wages, or for the clearing and breaking of land within reserves,	Because of the Appropriation Act and the regulations, section 70 of the Indian Act is no longer in use.
(b) to expend or to lend money for the carrying out of cooperative projects on behalf of Indians, or	
(c) to provide for any other matter prescribed by the Governor in Council.	
(2) The Governor in Council may make regulations to give effect to subsection (1).	(See Appropriation Acts, including Indian Economic Development Direct Loan Order, S.O.R./78-22, as am. S.O.R./78-327; and Indian Off Reserve and Eskimo Housing Regulations, C.R.C. 1978, c.329.)
(3) Expenditures that are made under subsection (1) shall be accounted for in the same manner as public moneys.	

INDIAN ACT, Section 70	EXPLANATION
(4) The Minister shall pay to the Receiver General all moneys that he receives from bands, groups of Indians or individual Indians by way of repayments of loans made under subsection (1). (5) The total amount of outstanding advances to the Minister under this section shall not at any one time exceed six million and fifty thousand dollars. (6) The Minister shall within fifteen days after the termination of each fiscal year or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session, lay before Parliament a report setting out the total number and amount of loans made under subsection (1) during that year. R.S., c.149, s.69; 1952-53, c.41, s.4; 1956, c.40, s.18; 1968-69, c.28, s.105; 1969-70, c.2, Sch. vote L50a. [see 1969-70, c.24, Sch. vote L53b.]	

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 71	EXPLANATION
FARMS	
71. (1) The Minister may operate farms on reserves and may employ such persons as he considers necessary to instruct Indians in farming and may purchase and distribute without charge, pure seed to Indian farmers.	The Minister can operate farms on reserves and can hire people to teach Indians farming.
(2) The Minister may apply any profits that result from the operation of farms pursuant to subsection (1) on reserves to extend farming operations on the reserves or to make loans to Indians to enable them to engage in farming or other agricultural operations or he may apply such profits in any way that he considers to be desirable to promote the progress and development of the Indians. R.S., c.149, s.70.	The Minister can spend the profits from farms on reserves in any way that he thinks will help the "progress and development" of the Indians.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 72	EXPLANATION
TREATY MONEY	
72. Moneys that are payable to Indians or to Indian bands under a treaty between Her Majesty and the band and for the payment of which the Government of Canada is responsible, may be paid out of the Consolidated Revenue Fund. R.S., c.149, s.71.	Treaty moneys shall be paid out of the Consolidated Revenue Fund.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 73(1)(a)	EXPLANATION
REGULATIONS	
73. (1) The Governor in Council may make regulations	The government can make regulations about any of the following matters:
(a) for the protection and preservation of fur-bearing animals, fish and other game on reserves;	(a) conservation of animals and fish on reserves;

COURT DECISIONS

Case 113. In *R.* v. *Sacobie*, a 1980 decision, the New Brunswick Queen's Bench stated that treaties and this paragraph, under which no regulations have been enacted, do not operate to the exclusion of such other federal acts as the *Fisheries Act* or any regulations made under it. With respect to fishing rights, Indians residing on reserves and fishing either on or off the reserve are to be treated equally with other Canadians. They must have a licence.

Case 114. In *R.* v. *Saulis*, a 1980 decision, the New Brunswick Queen's Bench decided that an Indian who was fishing for salmon one-quarter mile off his reserve, with a net and without a licence, contrary to the *Fisheries Act*, was guilty of an offence. The provisions of that Act and any regulations apply to reserve Indians over any treaties and the provisions of subsections 73(1)(a) and 81(o).

Case 108. In *R.* v. *Perley*, a 1981 decision, the New Brunswick Court of Queen's Bench ruled that the federal *Fisheries Act*, together with any regulations, apply to treaty Indians fishing in waters within, adjacent to, or off a reserve. In the absence of regulations under this paragraph, the regulations under the *Fisheries Act* prevail. In *obiter dictum*, the trial Court thought that if the Governor in Council enacted regulations under this paragraph that were more strict than those under the *Fisheries Act*, the treaty Indians would likely challenge them as being discriminatory. Conversely, if such regulations permitted fishing by the Indians, they would likely be challenged as causing reverse discrimination contrary to the public interest in that their effect would be to destroy a natural resource.

INDIAN ACT, Section 73(1)(b), (c)	EXPLANATION
(b) for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves;	(b) the destruction of weeds and the prevention of the spread of insect pests or diseases that might hurt plants and trees on reserves;
(c) for the control of the speed, operation and parking of vehicles on roads within reserves;	Under this section the government has enacted the *Indian Reserve Traffic Regulations*, C.R.C. 1978, c.959, which, in general, provide that all laws and regulations in force in the province in which an Indian reserve is located will apply to motor vehicles on the reserve. The wording of 73(1)(c) limits the effect of the regulations to laws and regulations relating to the "speed, operation and parking" of vehicles. A series of cases have held that these words include laws requiring driving licences.

COURT DECISIONS

Cases 98 (*R.* v. *Johns*), 119 (*R.* v. *Spear Chief*), 99 (*R.* v. *Johns*), and 120 (*R.* v. *Sport*) have held that the wording "speed, operation and parking" of vehicles includes laws requiring drivers licences.

Case 94. In *R.* v. *Isaac*, a 1973 decision, the Ontario Court of Appeal ruled that the regulations under section 73(1)(c) could include provincial laws relating to vehicle licence plates and to insurance.

Case 124. In *R.* v. *Twoyoungmen*, a 1979 decision, the Alberta Appeal Court ruled that provincial insurance requirements did not apply to an Indian driving a car on a reserve as a result of the *Indian Reserve Traffic Regulations*, but did apply to the Indian as a result of section 88 (Legal Rights).

INDIAN ACT, Section 73(1)(c)	EXPLANATION
	Because the *Indian Reserve Traffic Regulations* provide that provincial laws will apply in certain situations, the question has arisen as to whether a person should be charged with a breach of the provincial motor vehicle law or with a breach of the *Indian Reserve Traffic Regulations*.

COURT DECISIONS

Case 94. In *R.* v. *Isaac*, a 1973 decision, the Ontario Court of Appeal ruled that the individual must be charged under the *Indian Act* or the *Indian Reserve Traffic Regulations* and dismissed charges laid under the provincial statute.

Case 123. In *R.* v. *Toney*, a 1973 decision, the Nova Scotia County Court ruled that charges must be laid under the *Indian Act* and not under the provincial statute.

Case 109. In *R.* v. *Picard*, a 1974 decision, the Quebec Court of Queen's Bench ruled that the charges must be laid under the *Indian Act* and not under the provincial statute.

Case 93. In *R.* v. *Hood*, a 1979 decision, the British Columbia Provincial Court ruled that the charges must be laid under the *Indian Act* and not under the provincial statute.

INDIAN ACT, Section 73(1)(c)	EXPLANATION
	The most common issue in cases under the *Indian Reserve Traffic Regulations* is whether the road in question is a public road. It is characteristic of most provincial motor vehicle laws that offences such as driving without a licence or driving without due care and attention are only offences if they are committed on a public highway. In this kind of situation it is a defence to argue that the road in question was a private road, serving only the Indian reserve community.

COURT DECISIONS

Cases 97 (*R.* v. *Joe*), 88 (*R.* v. *Deer*), 83 (*R.* v. *Bigeagle*), and 93 (*R.* v. *Hood*) deal with the question whether or not the road involved in each case was a public highway.

Case 97. In *R.* v. *Joe*, a 1969 decision, the British Columbia Court of Appeal ruled that a road must be used by the general public for their own purposes (and not for purposes connected with the Indian reserve community) before it could be considered to be a public highway.

INDIAN ACT, Section 73(1)(d),(e), (f),(g),(h)	EXPLANATION
(d) for the taxation, control and destruction of dogs and for the protection of sheep on reserves;	(d) the taxation, control, and destruction of dogs and the protection of sheep on reserves; (see Indian Reserve Dog Regulations, C.R.C. 1978, c.958.);
(e) for the operation, supervision and control of pool rooms, dance halls and other places of amusement on reserves;	(e) the control of pool rooms and dance halls on reserves; (see Places of Amusement Regulations, C.R.C. 1978, c.962.);
(f) to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable;	(f) the prevention and control of diseases on reserves;
(g) to provide medical treatment and health services for Indians;	(g) health services for Indians;
(h) to provide compulsory hospitalization and treatment for infectious diseases among Indians;	(h) the forced hospitalization and treatment of infectious diseases among Indians; (see Indian Health Regulations, C.R.C. 1978, c.955.);

COURT DECISIONS

Case 122. In R. v. Swimmer, a 1970 decision, the Saskatchewan Court of Appeal noted that pursuant to regulations enacted under section 73(1)(h), which were also recognized by the provincial regulations under the Hospitalization Act and the Medical Care Insurance Act, the Government of Canada agreed to pay the hospital tax and to provide medical care for Indians resident in Saskatchewan and residing on a reserve, or residing outside a reserve for less than twelve months. These regulations do not offend the provisions of the "medicine chest" clause of Treaty #6 and are intra vires the Province. The "medicine chest" clause in Treaty #6 should not be interpreted to mean that the Indians are entitled to receive all medical services, including hospital care, free of charge. An Indian, then, who was a resident of Saskatchewan and had resided outside a reserve for a period in excess of twelve months, was liable for the payment of the joint tax under the provisions of those provincial statutes.

INDIAN ACT, Sections 73(1)(i), (j), (k), (l), (m); Section 73(2), (3)	EXPLANATION
(i) to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof;	(i) the inspection of buildings on reserves and their destruction or repair;
(j) to prevent overcrowding of premises on reserves used as dwellings;	(j) to stop overcrowding in houses on reserves;
(k) to provide for sanitary conditions in private premises on reserves as well as in public places on reserves;	(k) clean and hygienic conditions in buildings on reserves; (See Indian Reserve Waste Disposal Regulations, C.R.C. 1978, c.960.);
(l) for the construction and maintenance of boundary fences; and	(l) building of boundary fences;
(m) for empowering and authorizing the council of a band to borrow money for band projects or housing purposes and providing for the making of loans out of moneys so borrowed to members of the band for housing purposes.	(m) providing for band councils to be given the power to borrow money for band projects or housing and for the band council to make loans to band members for the building or repair of houses. (See Indian Band Council Borrowing Regulations, C.R.C. 1978, c.949.);
(2) The Governor in Council may prescribe the penalty, not exceeding a fine of one hundred dollars or imprisonment for a term not exceeding three months, or both, that may be imposed on summary conviction for violation of a regulation made under subsection (1).	(2) The Government can say in the regulations what the punishment is to be for breaking the regulations. The punishment cannot be more than $100 or 3 months in jail (or both).
(3) The Governor in Council may make orders and regulations to carry out the purposes and provisions of this Act. R.S., c.149, s.72; 1956, c.40, s.19.	(3) The Government may make orders and regulations to carry out the purposes of the Indian Act. (See Administrative Services Fees Order, C.R.C. 1978, c.947, and Indian Referendum Regulations, C.R.C. 1978, c.957.);

COURT DECISIONS

This section has not been considered by the Courts to our knowledge

INDIAN ACT, Section 74	EXPLANATION
ELECTIONS OF CHIEFS AND BAND COUNCILS	
74. (1) Whenever he deems it advisable for the good government of a band, the Minister may declare by order that after a day to be named therein the council of the band, consisting of a chief and councillors, shall be selected by elections to be held in accordance with this Act.	When the Minister thinks it will be good for a band, he can issue an order that after a certain date the chief and councillors of a band shall be chosen by elections held according to the *Indian Act*. See Cases 56, 25, 21 and 33 under Court Decisions on this section.
(2) Unless otherwise ordered by the Minister, the council of a band in respect of which an order has been made under subsection (1) shall consist of one chief, and one councillor for every one hundred members of the band, but the number of councillors shall not be less than two nor more than twelve and no band shall have more than one chief.	(2) Unless the Minister decides otherwise, the elected council shall comprise: (1) only one chief; and (2) one councillor for every 100 band members, but not fewer than 2 and not more than 12.
(3) The Governor in Council may, for the purposes of giving effect to subsection (1), make orders or regulations to provide	(3) The government can make election regulations to provide:
(a) that the chief of a band shall be elected by (i) a majority of the votes of the electors of the band, or (ii) a majority of the votes of the elected councillors of the band from among themselves, but the chief so elected shall remain a councillor; and	(a) that the chief can either be elected by the majority of the electors who vote, or he can be a councillor elected by a majority of the councillors; and

INDIAN ACT, Section 74	EXPLANATION
(b) that the councillors of a band shall be elected by (i) a majority of the votes of the electors of the band, or (ii) a majority of the votes of the electors of the band in the electoral section in which the candidate resides and that he proposes to represent on the council of the band.	(b) band councillors can be elected by the majority vote of the electors who voted, or by the majority vote of the electors in the electoral section in which the candidate lives and that he will represent on the band council. (See Indian Band Election Regulations, C.R.C. 1978, c.952).
(4) A reserve shall for voting purposes consist of one electoral section, except that where the majority of the electors of a band who were present and voted at a referendum or a special meeting held and called for the purpose in accordance with the regulations have decided that the reserve should for voting purposes be divided into electoral sections and the Minister so recommends, the Governor in Council may make orders or regulations to provide that the reserve shall for voting purposes be divided into not more than six electoral sections containing as nearly as may be an equal number of Indians eligible to vote and to provide for the manner in which electoral sections so established shall be distinguished or identified. R.S., c.149, s.73; 1956, c.40, s.20.	(4) If the majority of the electors who voted either in a referendum or at a special meeting decide in favour, and the Minister recommends, then the reserve can be divided into not more than six sections for voting purposes. Each section shall have roughly the same number of electors. These parts of the reserve are to be called "electoral sections".

Case 56. In Logan v. Styres, a 1959 decision, the Ontario High Court ruled that the Parliament of Canada has the authority to make a law saying that elected councillors under this Act will replace the hereditary chiefs in matters dealing with the surrender of Indian reserve lands.

Case 25. In Davey v. Isaac, a 1977 decision, the Supreme Court of Canada ruled that this subsection applies to the Six Nations Indians. The Court has the power to grant a permanent injunction preventing some members of that band, who wanted to return to the traditional system of government by hereditary chiefs, from obstructing the use of a council house on the reserve by the elected council members.

Case 21. In Canatonquin v. Gabriel, a 1980 decision, the Federal Court of Appeal ruled that a custom band council had no authority when a council elected under this section existed. In a dispute, the Court had jurisdiction to determine the right of the elected persons to exercise the statutory functions of a band council and, if the customary council succeeded in their claim that the system of elections was illegally changed, to declare that the elected persons are not the chief and councillor of the band and that the offices are vacant, thereby leaving it up to the appropriate authority to arrange for a legally elected council. The Court does not have the jurisdiction to hear a claim for an injunction to restrain the elected persons from calling themselves hereditary chiefs or using the name of the Six Nations of the Iroquois Confederacy or even to order a new election.

Case 33. In Francis v. Can. L. R. B., a 1982 decision, the Supreme Court of Canada ruled that the definition of employer as "any person who employs one or more employees" under the Canada Labour Code may include an Indian band council for purposes of a certification order under that Code, despite its lack of corporate status. Subsection 74(1) deals with the creation of a statutory body, the council, selected by elections. Although this Act does not provide for incorporation of that body, the council is given substantial legislative powers under section 81 to enact by-laws that can only be enforced by employing staff. In this case, the council did in fact employ staff and pay them by cheques issued in its name. Under the Interpretation Act, "person" includes the plural form of "persons". The council, being a designated body of persons given a specific role under this Act, therefore comes within the definition of employer and can be certified as such.

INDIAN ACT, Section 75	EXPLANATION
75. (1) No person other than an elector who resides in a section may be nominated for the office of councillor to represent that section on the council of the band.	Only an elector who lives in a section can be nominated as a councillor to represent that section.
(2) No person may be a candidate for election as chief or councillor unless his nomination is moved and seconded by persons who are themselves eligible to be nominated. R.S., c.149, s.74.	No person can put himself forward to be elected as chief or councillor unless his nomination is moved and seconded by people who could stand for these offices themselves.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 76	EXPLANATION
76. (1) The Governor in Council may make orders and regulations with respect to band elections and, without restricting the generality of the foregoing, may make regulations with respect to	The government can make regulations concerning band elections. The regulations can deal specifically with the following matters:
(a) meetings to nominate candidates;	(a) meetings to nominate people to stand for chief and councillors;
(b) the appointment and duties of electoral officers;	(b) people to ensure that voting is properly conducted;
(c) the manner in which voting shall be carried out;	(c) the way in which the voting is to be done - especially secret voting;
	See Case 145 under Court Decisions on this Section.
(d) election appeals; and	(d) appeals against elections; and
(e) the definition of residence for the purpose of determining the eligibility of voters.	(e) deciding who usually lives on the reserve and so is eligible to vote.
(2) The regulations made under paragraph (1)(c) shall make provision for secrecy of voting. R.S., c.149, s.75.	(See Indian Band Election Regulations, C.R.C. 1978, c.952.)

COURT DECISIONS

Case 145. In Walkem v. Draney, a 1980 decision, the Federal Court of Canada, Trial Division, decided that the election of a chief of a band, where the deciding vote was cast by the electoral officer, was proper, as no conflict existed between section 76(1)(b) and section 77 of the Indian Act. The electoral officer was not required to be a person qualified to vote under section 77.

INDIAN ACT, Section 77	EXPLANATION
77. (1) A member of a band who is of the full age of twenty-one years and is ordinarily resident on the reserve is qualified to vote for a person nominated to be chief of the band, and where the reserve for voting purposes consists of one section, to vote for persons nominated as councillors.	Any member of the band who is at least 21 years old and usually lives on the reserve can vote in the election of a chief. He can also vote in the election of the councillor to represent his section. If the whole reserve is one section, then he can vote for the people nominated as councillors.
(2) A member of a band who is of the full age of twenty-one years and is ordinarily resident in a section that has been established for voting purposes is qualified to vote for a person nominated to be councillor to represent that section. R.S., c.149, s.76.	Any member of the band who is at least 21 years old and usually lives on the reserve can vote in the election of a new councillor to represent his section.

COURT DECISIONS

Case 145. In Walkem v. Draney, a 1980 decision, the Federal Court of Canada, Trial Division, decided that the election of a chief of a band, where the deciding vote was cast by the electoral officer, was proper, as no conflict existed between section 76(1)(b) and section 77 of the Indian Act. The electoral officer was not required to be a person qualified to vote under section 77.

INDIAN ACT, Section 78	EXPLANATION
78. (1) Subject to this section, chiefs and councillors hold office for two years.	
(2) The office of chief or councillor becomes vacant when	A chief or councillor loses his place as chief or councillor if one of the following things happens:
(a) the person who holds that office	(a) the person holding the office
(i) is convicted of an indictable offence,	(i) is found guilty by a court of a serious crime,
(ii) dies or resigns his office, or	(ii) resigns or dies, or
(iii) is or becomes ineligible to hold office by virtue of this Act; or	(iii) loses the right to hold office under some other section of this Act (for example - if he or she loses status through enfranchisement or marriage),
(b) the Minister declares that in his opinion the person who holds that office	(b) the Minister thinks he is not fit to hold the office because
(i) is unfit to continue in office by reason of his having been convicted of an offence,	(i) a court has found him guilty of a minor crime,
(ii) has been absent from meetings of the council for three consecutive meetings without being authorized to do so, or	(ii) he has not attended three Council meetings in a row (without permission), or
(iii) was guilty, in connection with an election, of corrupt practice, accepting a bribe, dishonesty or malfeasance.	(iii) he did something dishonest in connection with an election. In this case, the Minister can say that he cannot stand for chief or councillor for up to six years.

INDIAN ACT, Section 78	EXPLANATION
(3) The Minister may declare a person who ceases to hold office by virtue of subparagraph (2)(b)(iii) to be ineligible to be a candidate for chief or councillor for a period not exceeding six years.	
(4) Where the office of chief or councillor becomes vacant more than three months before the date when another election would ordinarily be held, a special election may be held in accordance with this Act to fill the vacancy. R.S., c.149, s.77.	If it happens that a new chief or councillor is needed more than three months before the time when another election would usually be held, then a special election can be held just for the one position.

COURT DECISIONS

Case 135. In Smith v. R. a 1972 decision, the Federal Court of Canada, Trial Division, ruled that subsection 78(4) contemplates general elections periodically to elect an entire council, with special elections to fill vacancies that occur more than three months before the next general election would ordinarily be held, and the term of the office of a person elected at a special election does not carry over beyond the next general election.

INDIAN ACT, Section 79	EXPLANATION
79. The Governor in Council may set aside the election of a chief or councillor on the report of the Minister that he is satisfied that	The government can declare the election of a chief or a councillor invalid if the Minister believes that:
(a) there was corrupt practice in connection with the election;	(a) somebody did something dishonest in connection with the election (for example, gave a bribe);
(b) there was a violation of this Act that might have affected the result of the election; or	(b) there was a breach of the *Indian Act* that might have affected the result of the election (for example, if the election was close and a lot of people who do not usually live on the reserve voted);
(c) a person nominated to be a candidate in the election was ineligible to be a candidate. R.S., c.149, s.78.	(c) a person who stood in the election did not have the right to stand.

COURT DECISIONS

Case 135. In *Smith* v. *R.* a 1972 decision, the Federal Court of Canada, Trial Division, ruled that when the Governor in Council sets aside an election of a chief under this section, any person elected to take his place at a special election can only remain in office for as long as the original chief could have. A chief must be elected at the next general election.

Case 130. In *Rider* v. *Ear*, a 1979 decision, the Alberta Supreme Court, Trial Division, decided that only the Federal Court has the jurisdiction to hear an action for an interim injunction to prevent the chief and the band council from carrying on any business by reason of irregularities in an election. An Indian who had been nominated as a candidate for the chief of the band was apparently struck off the ballot of candidates.

Case 131. In *Rieber* v. *Starr*, a 1979 decision, the Manitoba County Court ruled that if other persons rely upon the apparent authority of a group of Indians as representatives of a band council in entering into a contract for services to be done, they can be compensated for any loss that they may incur if they later discover that the authority of those Indians had been previously ended when the council was dissolved under this Act.

Case 21. In *Canatonquin* v. *Gabriel*, a 1980 decision, the Federal Court of Appeal stated that the validity of an election is not governed solely by customary Indian law. In looking at the general scheme of the *Indian Act*, and specifically to the provisions respecting the removal of a chief or councillor from office pursuant to sections 78 and 79, the Court found that the council resembles a somewhat restricted form of government on the reserve. In the case where the Plaintiff claims that the system of elections of the band was illegally changed with the result that the Defendants were elected as hereditary chiefs with a lifelong tenure, the Federal Court's jurisdiction is limited to determining the right of the Defendants to exercise the statutory functions of a band council and, if the Plaintiff succeeds, to declare that the Defendants are not the chief and councillor of the band and that the offices are vacant, thereby leaving it up to the appropriate authority to arrange for a legally elected council. The Court does not have the jurisdiction to hear a claim for an injunction to stop the Defendants from calling themselves hereditary chiefs, from using the name of the Six Nations of the Iroquois Confederacy, or even to order a new election.

INDIAN ACT, Section 80	EXPLANATION
80. The Governor in Council may make regulations with respect to band meetings and council meetings and, without restricting the generality of the foregoing, may make regulations with respect to	The government can make whatever regulations it wants concerning band meetings and council meetings, including:
(a) presiding officers at such meetings;	(a) who is to be in charge at band meetings and band council meetings;
(b) notice of such meetings;	(b) who must be told that meetings are going to be held and how and when they must be told;
(c) the duties of any representative of the Minister at such meetings; and	(c) the duties of any departmental officer at meetings;
(d) the number of persons required at the meeting to constitute a quorum. R.S., c.149, s.79.	(d) the number of people who have to be at a meeting before it can do any business. (See Indian Band Council Procedure Regulations, C.R.C. 1978, c.950.)

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 81(a), (b), (c)	EXPLANATION
POWERS OF THE BAND COUNCIL	
81. The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely:	The band council can make by-laws (rules) for the following purposes as long as the rules do not conflict with the Indian Act or any regulations made by the government or the Minister:
(a) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases;	(a) to protect the health of people who live on the reserve and to stop the spread of diseases;
(b) the regulation of traffic;	(b) to control traffic;
(c) the observance of law and order;	(c) to keep law and order;

COURT DECISIONS

Case 139. In Re Stacey and Montour, a 1981 decision, the Quebec Court of Appeal said that section 81(c) does not give the band council a judicial power, but merely the power to regulate administrative statutes. A provincial magistrate or judge has the right to hear and decide the case of an Indian charged with assault under the Criminal Code, where the offence was committed on the reserve by reserve Indians against reserve Indians.

INDIAN ACT, Section 81(d), (e), (f)	EXPLANATION
(d) the prevention of disorderly conduct and nuisances;	(d) to stop people from behaving wildly and from doing things that hurt or bother other people;
(e) the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of pound-keepers, the regulation of their duties and the provision for fees and charges for their services;	(e) to set up pounds where cattle and other stray animals can be looked after;
(f) the construction and maintenance of water courses, roads, bridges, ditches, fences and other local works;	(f) to build and look after roads, bridges, ditches, fences, water courses and so on;

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 81(g)	EXPLANATION
(g) the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any such zone;	(g) to divide the reserve into building and business zones, and to regulate what may or may not be done within those zones;

COURT DECISIONS

Case 60. In *Mathias* v. *Findlay*, a 1978 decision, the British Columbia Supreme Court Chambers granted an injunction preventing the Defendant band member from living on an unoccupied parcel of reserve land that had been designated by band by-law as a special development area. The appropriate proceeding is a representative action (sometimes known as a "class action") brought by the band council members (without necessarily joining the federal Crown as a party) in the provincial superior court for trespass to reserve lands.

Case 51. In *Mohawk* v. *Rice*, a 1980 decision, the Quebec Court of Appeal ruled that the band council does not have the power to exclude individual businesses that fall within a prohibited class in a zone from that prohibition (for example, the prohibition of storing of scrap vehicles on reserve property). Band councils, like municipal councils, can only make by-laws within the authority delegated to them by legislation.

Case 45. In *Joe* v. *Findlay*, a 1981 decision, the British Columbia Court of Appeal ruled that a registered band member, who had established a home on a parcel of reserve land that had been previously designated by band by-law as a special development area, was guilty of trespass at common law without lawful justification.

INDIAN ACT, Section 81(h)	EXPLANATION
(h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band;	(h) to control the way in which buildings owned by the band or by band members are built, repaired and used;

COURT DECISIONS

Case 25. In *Davey* v. *Isaac*, a 1977 decision, the Supreme Court of Canada upheld the granting of a permanent injunction for the restraining of certain band members, who sought to return to the traditional system of government by hereditary chiefs, from obstructing the use of the council house on the Six Nations Reserve by members of the council of the Six Nations Band duly elected under the provisions of the *Indian Act*. It was not necessary for the band council to enact a by-law to assert their use of the council house, as they were properly entitled to use it, and the Defendants were not entitled to prevent its use.

Case 82. In *R.* v. *Bear*, a 1981 decision, the New Brunswick Queen's Bench stated that the wording of a by-law is very important. In an action against an Indian woman for unlawfully occupying and interfering with the normal business of a building on the reserve used for band purposes contrary to a band by-law, the Crown must formally demonstrate the validity of the by-law and the designation by the chief and the band council of the buildings for "public" not "business" purposes as contemplated by the wording of that by-law.

INDIAN ACT, Section 81(i), (j), (k) (l), (m), (n)	EXPLANATION
(i) the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section 60;	(i) to divide the reserve among members of the band, with some land kept for everybody's use, to survey the lots, and to keep a register of Certificates of Possession and Occupation. This can only be done if the Minister has given the band the power to do it under Section 60;
(j) the destruction and control of noxious weeds;	(j) to control weeds;
(k) the regulation of bee-keeping and poultry raising;	(k) to control bee-keeping and chicken and domestic fowl farming;
(l) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies;	(l) to control the building and use of the band water supply;
(m) the control and prohibition of public games, sports, races, athletic contests and other amusements;	(m) to control or stop sports days, shows and so on;
(n) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise;	(n) to control salesmen who come onto the reserve to buy or sell goods;

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 81(o)	EXPLANATION
(o) the preservation, protection and management of fur-bearing animals, fish and other game on the reserve;	(o) the conservation of fish and animals; the control of hunting, fishing and trapping;

COURT DECISIONS

Case 113. In R. v. Sacobie, a 1980 decision, the New Brunswick Queen's Bench ruled that this subsection does not give to local Indian band councils the right to regulate fishing to the exclusion of the federal Fisheries Act. With respect to fishing rights, treaty Indians residing on reserves are to be treated equally with the other inhabitants of Canada.

Case 114. In R. v. Saulis, a 1980 decision, the New Brunswick Queen's Bench ruled that treaties and subsections 73(1)(a) and 81(o) of the Indian Act do not serve to negate the applicability of the Fisheries Act and any regulations made thereunder to an Indian living on a reserve and fishing one-quarter mile off his reserve with a net and without a licence.

Case 108. In R. v. Perley, a 1981 decision, the New Brunswick Court of Queen's Bench ruled that the federal Fisheries Act, together with any regulations, apply to treaty Indians fishing in contravention to that Act in waters within, adjacent to, or off a reserve and are paramount to any treaty rights. This subsection does not negate the federal Act and regulations.

INDIAN ACT, Section 81(p)	EXPLANATION
(p) the removal and punishment of persons trespassing upon the reserve or frequenting the reserve for prescribed purposes;	(p) to stop and punish people who unlawfully enter the reserve or who come onto it to do things that are not allowed;

COURT DECISIONS

Case 92. In R. v. Gingrich, a 1958 decision, the Alberta Court of Appeal ruled that even though this subsection does give the band council the power to remove and punish persons found trespassing on the reserve, it does not give them the power to decide what constitutes trespassing. The band council, by establishing a system of permits, cannot create the offence of trespass by those (such as a non-Indian missionary invited to the reserve for religious reasons) who enter the reserve without a permit.

Case 115. In R. v. Sellars, a 1977 decision, the British Columbia Provincial Court ruled that even though there was no band by-law preventing trespass and an Indian possessed no formal authority of the band, that Indian had the right to expel, with such force as was necessary in the circumstances, any person trespassing on reserve land by virtue of the fact of his real interest in such reserve lands.

INDIAN ACT, Section 81(q), (r)	EXPLANATION
(q) with respect to any matter arising out of or ancillary to the exercise of powers under this section; and	(q) anything else that needs to be done in order to do the things listed above;
(r) the imposition on summary conviction of a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section, R.S., c.149, s.80.	(r) to provide that if anyone breaks the by-laws, he can be punished in court by a fine of not more than one hundred dollars or one month in jail (or both).

COURT DECISIONS - Section 81(r)

Case 59. In Re Masset Band Council and A.- G. of B.C., a 1976 decision, the British Columbia Supreme Court stated that under section 81(r), the band council, like a municipal council, is vested with broad powers to promote the well-being of the band. The band council had standing to be heard and represented by counsel at an inquest into the death of three non-band persons who had died in the crash of an airplane operated by one of two companies that provided service between their isolated community and the mainland.

Case 130. In Rider v. Ear, a 1979 decision, the Alberta Supreme Court, Trial Division, ruled that an action for an interim injunction to prevent the chief and the band council from transacting any business on the grounds of irregularities in an election lies within the sole jurisdiction of the Federal Court, because an Indian band council exercising powers granted to it under the Indian Act (and particularly under section 81) is a "federal board, commission or other tribunal" within the meaning of section 18 of the Federal Court Act.

Case 21. In Canatonquin v. Gabriel, a 1980 decision, the Federal Court of Appeal, in looking at the powers given to a band council, found that it resembles a somewhat restricted form of government by the council of and on the reserve. The Federal Court had jurisdiction to hear a matter alleging that a system of elections had been illegally changed, because the council of the band is a "federal board" within the meaning of the Federal Court Act.

Case 33. In Francis v. Can. L.R.B., a 1982 decision, the Supreme Court of Canada ruled that the definition of employer as "any person who employs one or more employees" under the Canada Labour Code may include an Indian band council for purposes of a certification order under that Code, despite its lack of corporate status. Subsection 74(1) deals with the creation of a statutory body, the council, selected by elections. Although this Act does not provide for incorporation of that body, the Council is given substantial legislative powers under section 81 to enact by-laws that can be enforced only through the employment of staff. In this case, the council did in fact employ staff and pay them by cheques issued in its name. Under the Interpretation Act, "person" includes the plural form of "persons". The council, being a designated body of persons that is given a specific role under this Act, therefore comes within the definition of employer and can be certified as such.

INDIAN ACT, Section 82	EXPLANATION
82. (1) A copy of every by-law made under the authority of section 81 shall be forwarded by mail by the chief or a member of the council of the band to the Minister within four days after it was made.	A copy of a by-law made under section 81 must be sent to the Minister within four days after it is made.
(2) A by-law made under section 81 comes into force forty days after a copy thereof is forwarded to the Minister pursuant to subsection (1), unless it is disallowed by the Minister within that period, but the Minister may declare the by-law to be in force at any time before the expiration of that period. R.S., c.149, s.81.	Forty days after the by-law has been sent to the Minister it comes into force. If the Minister does not approve it, then the by-law does not come into force. If the Minister says so, the by-law can come into force before the end of the forty-day period.

COURT DECISIONS

Case 82. In R. v. Bear, a 1981 decision, the New Brunswick Queen's Bench stated that this section outlines the procedure to be followed in order for a by-law to come into force. Under the federal Statutory Instruments Act, the by-law is a statutory instrument, but it does not need to be published in the Canada Gazette. It must, however, be registered under the federal Statutory Instruments Act.

INDIAN ACT, Section 83	EXPLANATION
83. (1) Without prejudice to the powers conferred by section 81, where the Governor in Council declares that a band has reached an advanced stage of development, the council of the band may, subject to the approval of the Minister, make by-laws for any or all of the following purposes, namely	As well as the powers given in Section 81, the federal cabinet, by declaring that a band has reached an advanced stage of development, can give a band council the following additional powers to make by-laws (but each by-law must be approved by the Minister):
(a) the raising of money by (i) the assessment and taxation of interests in land in the reserve of persons lawfully in possession thereof, and (ii) the licensing of businesses, callings, trades and occupations;	1. the taxation of persons with lawful possession of reserve land; 2. the licensing of businesses; 3. the hiring of employees; 4. the payment of salaries or per diems to chiefs and councillors, the exact amount to be approved by the Minister; 5. The imposition of penalties where taxes imposed under this section are not paid; 6. the raising of money from band members for band projects; and 7. other matters connected with these by-laws.
(b) the appropriation and expenditure of moneys of the band to defray band expenses; (c) the appointment of officials to conduct the business of the council, prescribing their duties and providing for their remuneration out of any moneys raised pursuant to paragraph (a); (d) the payment of remuneration, in such amount as may be approved by the Minister, to chiefs and councillors, out of moneys raised pursuant to paragraph (a);	There has been doubt whether this section allows the taxation of non-Indian interests in reserve lands. It has been suggested that the taxation of persons in lawful possession of reserve land under section 83(1)(a)(i) may be limited to lawful possession under sections 20 to 27. There has also been a question whether band council powers extend to surrendered lands. If the term "reserve" in section 83(1)(a)(i) does not include surrendered lands, a band's taxing power would not extend to surrendered lands. These questions have not been dealt with by the courts to our knowledge.

INDIAN ACT, Section 83	EXPLANATION
(e) the imposition of a penalty for non-payment of taxes imposed pursuant to this section, recoverable on summary conviction, not exceeding the amount of the tax or the amount remaining unpaid;	
(f) the raising of money from band members to support band projects; and	
(g) with respect to any matter arising out of or ancillary to the exercise of powers under this section.	
(2) No expenditure shall be made out of moneys raised pursuant to paragraph (1)(a) except under the authority of a by-law of the council of the band. R.S., c.149, s.82; 1956, c.40, s.21.	Money raised by taxes under (1) above can be spent only with the permission of a by-law of the band council.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 84	EXPLANATION
84. Where a tax that is imposed upon an Indian by or under the authority of a by-law made under section 83 is not paid in accordance with the by-law, the Minister may pay the amount owing together with an amount equal to one-half of one per cent thereof out of moneys payable out of the funds of the band to the Indian. R.S., c.149, s.83.	Where an Indian does not pay the tax put on his rights to his land by the band council, then the Minister can pay it out of moneys due to him out of the band funds.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 85	EXPLANATION
85. The Governor in Council may revoke a declaration made under section 83 whereupon that section no longer applies to the band to which it formerly applied, but any by-law made under the authority of that section and in force at the time the declaration is revoked shall be deemed to continue in force until it is revoked by the Governor in Council. R.S., c.149, s.84.	Even though the government has given the band council the power to make these by-laws, it can still take this power away when it wants to. If the government decides to take the power away, any by-laws that the band council had made remain in force until the government cancels them.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 86	EXPLANATION
86. A copy of a by-law made by the council of a band under this Act, if it is certified to be a true copy by the superintendent, is evidence that the by-law was duly made by the council and approved by the Minister, without proof of the signature or official character of the superintendent, and no such by-law is invalid by reason of any defect in form. R.S., c.149, s.85.	A copy of a by-law made by a band council on which the superintendent has written a statement saying that it is a true copy is good enough proof that the by-law has been properly made. No by-law is made invalid just because it is not written in the proper format.

COURT DECISIONS

Case 82. In R. v. Bear, a 1981 decision, the New Brunswick Queen's Bench stated that since a by-law is not required to be published in the Canada Gazette, it is not an instrument by which judicial notice is required to be taken. The person relying on that by-law must therefore produce proof of that by-law in admissible form. This section provides a method of proving that by-law. The by-law in this case bore two notations, namely:

(1) REGISTRATION - ENREGISTREMENT
NO. Date
SOR/80/195 21 March, 1980

(2) Certified to be a true Copy
Copie Certifiée Conforme
(Signature illegible)
Assistant Clerk of the Privy Council
Le Greffier Adjoint du Conseil Privé

together with the impression of the Seal of the Assistant Privy Council Clerk. Since it was not certified by the superintendent, the copy of the by-law submitted was inadmissible as evidence and, accordingly, the by-law was not proved. An action against an Indian woman for interfering with a business on the reserve contrary to that by-law must then be dismissed.

INDIAN ACT, Section 87	EXPLANATION
TAXATION	
87. Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to subsection (2) and to section 83, the following property is exempt from taxation, namely:	Regardless of any other federal or provincial law, the following property is free from taxation:
(a) the interest of an Indian or a band in reserve or surrendered lands; and	(a) the interest of an Indian or a band in reserve or surrendered lands; and
(b) the personal property of an Indian or band situated on a reserve;	(b) the personal property (cars, furniture) of an Indian or a band when it is located on a reserve. This exemption extends to taxes on the estate of an Indian who has died if the property goes to another Indian. If the Indian who has died has property on the reserve and property off the reserve, the taxes on the estate must only be based on the value of the property off the reserve.
and no Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (a) or (b) or is otherwise subject to taxation in respect of any such property; and no succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any such property or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the Dominion Succession Duty Act, being chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the Estate Tax Act, on or in respect of other property passing to an Indian. R.S., c.149, s.86; 1958, c.29, s.59; 1960, c.8, s.1.	

Case 34. In Francis v. The Queen, a 1956 decision, the Supreme Court of Canada decided that a Canadian Indian resident on a reserve is subject to general customs legislation and cannot, therefore, claim exemption for household articles (a washing machine, a refrigerator and an oil heater) imported by him into Canada from the U.S.A. Under this section, property "situated on a reserve" is unequivocal and does not mean property entering Canada or passing an international boundary. In obiter dictum, the Court went on to say that the exemption would be limited to the case in which that boundary also bounded the Reserve and would be a special indulgence to the small fraction of Indians residing on that reserve. Until such duties are paid, the imported articles may be placed under customs detention/seizure.

Case 110. In R. v. Point, a 1957 decision, the British Columbia Court of Appeal ruled that there is a duty on a status Indian to file an income tax return.

Case 100. In R. v. Johnston, a 1966 decision, the Saskatchewan Court of Appeal decided that an Indian who was a resident of Saskatchewan residing off the reserve was liable to pay taxes or premiums under the Hospitalization Act. Under the "medicine chest" clause of Treaty #6, it was the obligation of the Crown to have on the reserve for the use and benefit of the Indians, free of charge, a supply of medicine, drugs, and supplies under the supervision of an agent. The Crown's obligation did not extend to providing free all medical services, including hospital care.

Case 122. In R. v. Swimmer, a 1970 decision, the Saskatchewan Court of Appeal ruled that an Indian who was a resident of Saskatchewan and had resided outside a reserve for a period in excess of twelve months had to pay the joint tax under the provisions of the provincial Hospitalization Act and Medical Care Insurance Act. By regulations made under paragraph 73(1)(h), the government pays the tax and provides medical care to Indians resident on the reserve or Indians who are resident off the reserve for less than twelve months. The "medicine chest" clause in Treaty #6 should not be interpreted to mean that Indians are entitled to receive all medical services, including hospital care, free of charge.

Case 132. In Sammartino v. A.-G. of B.C., a 1971 decision, the British Columbia Court of Appeal stated that a non-Indian in occupation of rural unsurrendered reserve lands under a void lease is still liable for the tax imposed under the provincial Taxation Act and the Public Schools Act. Where a provincial statute imposes a tax on an occupier of Crown lands in respect of the land and improvements on such lands, its application to a person in occupation of Indian reserve lands under a lease does not constitute a tax on Indian lands.

Case 78. In Prov. Mun. Assessor v. Mun. of Harrison, a 1971 decision, the Manitoba Queen's Bench decided that while the lands of Indian reserves to which the Crown in right of Canada holds the legal title are exempt from all taxation, the "right, interest or estate in such land" is liable to taxation. It is the interest of the private person, such as the non-Indian lessee of a mobile home on Indian reserve lands lying within the boundaries of a municipality, and not the Crown, that is being assessed and taxed under the Municipal Assessment Act. Liability for tax is personal. The interests of occupants of Crown lands or of any other persons who have a beneficial or equitable interest in the lands are to be assessed according to the actual value of the lands.

Case 64. In M.N.R. v. Iroquois of Caughnawaga, a 1977 decision, the Federal Court of Appeal ruled that the employer's share of unemployment insurance premiums must be paid in respect of persons employed by an Indian band at a hospital and related facility operated by that band on its reserve. The Indian band came within the definition of an "employer" under the Unemployment Insurance Act, 1971. Assuming that an employer's liability to contribute to the cost of the unemployment insurance scheme established is taxation, it is not taxation on "property", so the band is not entitled to the exemption under this section.

Case 116. In R. v. Simon, a 1977 decision, the Nova Scotia County Court did not interpret this section to mean that such personal property is exempt from all tax at every stage of its existence from production to consumption. It must refer to personal property of an Indian after he acquires title to it. In obiter dictum, the Court stated that this section was probably intended to prevent municipal taxation of the personal property of Indians on reserves. Where an Indian was charged while on his reserve with unlawfully using tax-exempt "marked" gas in his car contrary to the Nova Scotia Gasoline and Diesel Oil Tax Act, the Court convicted that Indian on the basis that the provincial statute, as a law of general application, related to the regulation of the use of gas on which tax has not been paid, not to the taxation of the gas as personal property.

Case 39. In Grammount Motel Ltd. v. Mun. of Mann, a 1977 decision, the Quebec Court of Appeal ruled that a municipality may not tax the federal Crown or its agent who is in possession of a building belonging to the Crown. It can, however, collect a tax from all other persons, including those holding the title of possession or occupying a building belonging to the Crown. In a case where the Crown has rented land for the profit of an Indian band, with the interest of the band being limited to the rent collected from the lessee or his representative, the tax does not then affect the interest of the band. Accordingly, the corporation that leased the land was liable to pay the municipal tax assessment.

Case 50. In Kuhn v. Starr, a 1977 decision, the Manitoba Queen's Bench stated that both sections 87 and 89 of the Indian Act speak in terms of personal property being "situated on a reserve". The language is clear: it is not the residence of the Indian that governs, but the actual and physical location of the personal property.

Case 40. In Greyeyes v. R., a 1978 decision, the Federal Court of Canada, Trial Division, decided that a scholarship received by an Indian for educational purposes is not taxable income, since it would amount to making such person "subject to taxation in respect of" the scholarship under subsection 87(b). The fact that the Indian did not actually reside on the reserve is not relevant. It is the property, not the Indian, that is required to be situated on the reserve.

Case 105. In R. v. N.I.B., a 1978 decision, the Federal Court of Canada, Trial Division, ruled that salaries paid to the Indian employees of the National Indian Brotherhood, a non-profit corporation having its head office in Ottawa, for work done in Ottawa and on various Indian reserves, is not "personal property situated on a reserve" within the meaning of this section. Salaries are therefore taxable under the Income Tax Act and the appropriate deductions must be made by the employer. Salaries, until paid, are contract debts, the location ("situs") of which is ordinarily the residence of the employee or debtor. The situs of salaries is not affected by the fact the moneys are taken by the Indian employee to the reserve and left on the reserve.

Case 136. In Snow v. R., a 1979 decision, the Federal Court of Appeal decided that wages and salary earned by a registered Indian, who was a resident of a reserve, as a steelworker for work performed off the reserve are not "personal property of an Indian situated on a reserve"; therefore, such wages and salaries are not exempt from taxation under the Income Tax Act.

Case 17. In Brown v. R., a 1979 decision, the British Columbia Supreme Court decided that this section was essential and intra vires Parliament. The phrase "personal property" includes electricity. The word "situated" is used in the sense of the word "located". Thus an Indian living on a reserve who purchases electricity that is delivered to and therefore located on the reserve is not liable for the tax imposed under the provincial Social Services Tax Act. Even if the tax was imposed on the purchase price of such electricity and not on the electricity itself, it would still constitute "tax in respect of" that electricity within the exemption contemplated by this section.

Case 48. In Kinookimaw Beach Assn. v. R., a 1979 decision, the Saskatchewan Court of Appeal ruled that a corporation formed by various Indian bands for the development of certain leased surrendered reserve lands into a resort area does not enjoy the exemption from taxation available to an Indian or a band under this section. The corporation is the user and consumer of the machinery, supplies and other tangible personal property; therefore, it is the corporation that is liable for the tax imposed under the provincial Education and Health Tax Act.

Case 15. In Boadway v. M.N.R., a 1980 decision, the Tax Review Board decided that wages earned by an Indian woman while she was employed as a librarian on a reserve by the Federation of Saskatchewan Indians subsequent to her marriage to a non-Indian was not exempt from income tax. She had lost her status as an Indian on her marriage to a non-Indian.

Case 106. In R. v. Noweijick, a 1983 decision, the Supreme Court of Canada ruled that an Indian does not have to pay income taxes on wages earned by him while he was living and employed on a reserve. In this case, wages paid to an Indian on his reserve by a corporation situated on the reserve for work in logging operations performed off the reserve are not to be included in that Indian's taxable income.

INDIAN ACT, Section 88	EXPLANATION
LEGAL RIGHTS 88. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act. R.S., c.149, s.87.	Section 88 provides that provincial laws that are of a general character apply to Indians unless (a) they are inconsistent with the terms of any treaty or federal statute, or (b) provision has been made for the same matter in the *Indian Act* or in any order, rule, regulation or by-law made under the authority of the *Indian Act*. There has been considerable confusion about what section 88 does. Two questions have been settled. The section uses the phrase "all laws of general application from time to time in force in any province". The courts have ruled that this means provincial laws. It does not include federal laws. Secondly the section applies only to "Indians". The question whether particular provincial laws apply to Indian reserves is a separate issue. The main question about section 88 at present is whether it actually changes anything. Some judges believe it simply states what would be the law anyway: when federal law has no special provisions for Indians, normal provincial laws apply. The only provincial laws that would not apply are those that single out Indians for discriminatory treatment. Other judges believe that certain provincial laws would not apply to Indians (even though the provincial laws would not discriminate and even though no federal laws govern the specific matter). These judges say that section 88 makes those laws apply to Indians. The major decision on this controversy is Case 69.

Case 69. In Natural Parents v. Superintendent of Child Welfare, a 1975 decision, the Supreme Court of Canada ruled that provincial adoption laws applied to the adoption of a status Indian child by non-Indian parents. A majority of the court ruled that the adoption would not affect the status of the child. Four judges ruled that the provincial adoption law could not, on its own, apply to status Indian children. Those judges said that the adoption law applied because of section 88. Four other judges ruled that the adoption law did apply on its own and that section 88 was simply a restatement of the existing constitutional rules. It did not change anything. The ninth judge made no comment on section 88.

Case 124. In R. v. Twoyoungmen, a 1979 decision, the Alberta Court of Appeal ruled that they preferred the view of the four judges (in Case 69) who said section 88 was simply a restatement of existing constitutional rules.

INDIAN ACT, Section 88	EXPLANATION
	A series of cases have held that particular provincial laws apply to Indians and have referred to section 88 in the course of the decision. Because of Case 69, described above, it is not possible to say with certainty whether section 88 was actually necessary to the decision that the provincial law applied.

COURT DECISIONS

Case 19. In Campbell v. Sandy, a 1956 decision, the Ontario County Court ruled that an Indian could be imprisoned for debt under provincial law.

Case 129. In R. v. Williams, a 1958 decision, the Ontario Magistrate's Court ruled that a provincial highway traffic act applied to Indians and a provincial peace officer could arrest an Indian on a reserve under that act for a driving offence that took place off the reserve.

Case 38. In Geoffries v. Williams, a 1958 decision, the British Columbia County Court ruled that provincial garnishment legislation applied to an Indian when the debt was located off a reserve.

Case 150. In Re Williams Estate and Trustee Act, a 1960 decision, the British Columbia Supreme Court ruled that the provincial administration of estates act applied to Indian estates on a specific matter not dealt with in the Indian Act.

Cases 57 and 122. In Re Manitoba Hospital Comm. and Klein, a 1969 decision, the Manitoba Court of Appeal, and in R. v. Swimmer, a 1970 decision, the Saskatchewan Court of Appeal ruled that provincial health insurance legislation applied to Indians.

Case 36. In Gabriel v. Curotte, a 1977 decision, the Quebec Superior Court ruled that provincial marriage legislation applied to Indians.

Cases 70 and 30. In Nelson v. Children's Aid Society of Eastern Man., a 1975 decision, the Manitoba Court of Appeal, and in Director of Child Welfare for Man. v. B., a 1979 decision, the Manitoba Provincial Court applied provincial child welfare legislation to Indians (as in Case 69, where the Supreme Court of Canada applied provincial adoption legislation to Indians).

Case 124. In R. v. Twoyoungmen, a 1979 decision, the Alberta Court of Appeal applied a provincial motor vehicle insurance law to Indians.

Case 32. In Re Four B. Manuf. Ltd. and United Garment Wkrs. of Amer., a 1979 decision, the Supreme Court of Canada applied provincial labour relations legislation to Indians.

INDIAN ACT, Section 88	EXPLANATION
	Two particular groups of cases can be dealt with separately. There have been a series of hunting and fishing cases in which section 88 has been a factor. The cases establish that section 88 does not protect Indian aboriginal or treaty rights against federal statutes such as the *Migratory Birds Convention Act* or the *Fisheries Act* (see Case 134, *R.* v. *Sikyea*; Case 91, *R.* v. *George*; Case 87, *R.* v. *Daniels and White*; and Case 28, *Derriksan* v. *R.*). The Supreme Court of Canada decided in 1965 (Case 126, *R.* v. *White and Bob*) that treaty-protected hunting rights could not be taken away by provincial laws. In 1978 the Ontario Divisional Court made the same ruling (Case 81, *R.* v. *Batisse*). This result seems to flow from section 88, particularly since in 1977 the Supreme Court of Canada ruled that where there was no treaty, provincial hunting laws did apply to Indians (a ruling that does not apply to hunting on reserves or hunting in a province covered by the Natural Resources Transfer Agreements) (Case 49, *Kruger and Manuel* v. *R.*). There is a second group of cases dealing with family law and marital property:

COURT DECISIONS

Case 13. In *Re Bell and Bell*, a 1977 decision, the Ontario Supreme Court ruled that a provincial partition act could apply to Indians on a reserve and result in an order to sell the marital home and divide the proceeds between the parties (the order to be subject to the provisions of the *Indian Act* on the transfer of on-reserve property).

Case 14. In *Black Plume* v. *Black Plume*, a 1979 decision, the Alberta Family Court ruled that provincial family maintenance laws applied to Indians.

Case 6. In *Re Baptiste*, a 1979 decision, the Alberta Court of Queen's Bench ruled that provincial family maintenance laws applied to Indians.

Case 133. In Sandy v. Sandy, a 1979 decision, the Ontario Court of Appeal applied provincial marital property legislation to Indians on a reserve in relation to the personal property of the husband and wife.

Case 43. In Re Hopkins and Hopkins, a 1980 decision, the Ontario County Court applied provincial marital property legislation to Indians on a reserve and made an order granting exclusive possession of an on-reserve marital home to the wife (subject to the approval of the Minister of Indians Affairs and Northern Development under the Indian Act).

NOTE ON THE APPLICATION OF PROVINCIAL LAWS TO INDIAN RESERVES

Section 88 deals only with the application of provincial laws to Indians. It does not deal with the question of the application of provincial laws to Indian reserves. The Supreme Court of Canada, in Case 32, Re Four B Manufacturing, emphasized that these are two separate questions.

Where the Indian Act makes specific provisions in relation to Indian reserves, the courts have always upheld those provisions against conflicting provincial laws. There are other cases where the Indian Act makes no specific provisions, and the courts have had to decide whether, on general constitutional principles, a particular provincial law can apply to an Indian reserve. These cases do not involve section 88 and deal with situations where there is no conflict between the provincial law and the Indian Act or any regulations or by-laws made under the Indian Act. In general, the courts have ruled that provincial laws that directly affect the use of land cannot apply to Indian reserves.

COURT DECISIONS

Case 62. In Re Milloy, an 1884 decision, the Ontario Court of Common Pleas ruled that a provincial law about animals running at large would not apply on an Indian reserve.

Case 4. In A.- G. of Ont. v. Francis, an 1889 decision, an Ontario court ruled that the province could not grant timber rights on an Indian reserve.

Case 96. In R. v. Jim, a 1915 decision, the British Columbia Supreme Court ruled that a provincial hunting law did not apply to an Indian hunting on a reserve.

Case 112. In R. v. Rodgers, a 1923 decision, the Manitoba Court of Appeal ruled that a provincial law on the sale of furs did not apply to furs trapped on an Indian reserve.

Cases 103 and 104. In R. v. McLeod, a 1930 decision, the British Columbia Supreme Court, and in R. v. Morley, a 1931 decision, the British Columbia Court of Appeal ruled that a non-Indian hunting on an Indian reserve could be convicted under provincial law.

Case 144. In Vancouver v. Chow Chee, a 1941 decision, the British Columbia Court of Appeal upheld a provincial tax on the occupier of Indian reserve lands in the situation where the land was made security for the payment of the tax. This decision has been confirmed in later rulings in Manitoba (Case 78, Prov. Mun. Assessor v. Mun. of Harrison) and British Columbia (Case 132, Sammartino v. A.-G. of B.C.).

Case 140. In Surrey v. Peace Arch Enterprises Ltd., a 1970 decision, the British Columbia Court of Appeal ruled that provincial zoning and building laws did not apply on reserve lands that had been surrendered and leased to a non-Indian. Under the terms of the lease, the non-Indian was planning to proceed with construction of an amusement park.

Case 80. In R. v. Baert Construction, a 1974 decision, the Manitoba Court of Appeal applied provincial laws relating to minimum wages and holidays to construction workers building facilities on an Indian reserve. The facilities were being built for the purposes of the reserve community.

Case 95. In R. v. Isaac, a 1976 decision, the Nova Scotia appeal court ruled that provincial hunting laws did not apply to an Indian hunting on a reserve.

Case 73. In Re Park Mobile Homes and Le Greely, a 1978 decision, the British Columbia Court of Appeal ruled that provincial rent control legislation applied to the agreement between a non-Indian lessee of Indian reserve land and a non-Indian tenant of the lessee's mobile home park.

Case 61. In Millbrook Indian Band v. Nor. Counties Res. Tenancies Bd., a 1978 decision, the Nova Scotia Supreme Court ruled that provincial laws requiring the provision of driveways and parking areas for mobile home parks did not apply to Indian reserves.

Case 117. In R. v. Sinclair, a 1978 decision, the Manitoba Provincial Court ruled that provincial laws requiring burning permits did not apply on Indian reserves.

Case 148. In Western Ind. Contr. Ltd. v. Sarcee Development Ltd., a 1979 decision, the Albert Court of Appeal ruled that provincial builder's lien legislation (under which a contractor can file a claim for moneys owing against the title to the land) can apply to a lease of Indian reserve lands.

There have been two decisions by the Supreme Court of Canada on the application of provincial laws. In Case 22, Cardinal v. R., a 1973 decision, the Court ruled that provincial laws restricting the sale of wild meat applied to an Indian on a reserve. The decision appears to be based on the wording of the Natural Resources Transfer Agreements of 1930 and may, therefore, only apply in the three prairie provinces. The case is important, however, for its rejection of the term "enclave" to describe Indian reserves. The majority judgment made it clear that while some provincial laws would not apply on Indian reserves, there is no sweeping exemption of reserves from provincial laws. The second decision, Re Four B Manufacturing (Case 32), in 1978 held that provincial labour relations laws applied to an Indian-owned business on an Indian reserve that primarily employed Indians. The provincial labour relations legislation was also held to apply to the employees of the band council; see Case 33, Francis v. Can. L.R.B. under Court Decisions on Section 81(r).

In 1980 the government of Alberta referred a series of questions about the application of provincial law to developments on leased Indian reserve lands. The 1981 decision of the Alberta Court of Appeal on Case 79, Re Enoch Decision, confirmed that provincial laws directly affecting the use of land could not apply to Indian reserve lands. The decision has been appealed to the Supreme Court of Canada.

INDIAN ACT, Section 89	EXPLANATION
89. (1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian.	The land and personal property of an Indian or a band that is on a reserve cannot be taken to pay a debt by any person other than an Indian. See Cases 19, 34, 38, 11, 149, 125, 50, 66, 13, 148 and 43 under Court Decisions on this section.
(2) A person who sells to a band or a member of a band a chattel under an agreement whereby the right of property or right of possession thereto remains wholly or in part in the seller, may exercise his rights under the agreement notwithstanding that the chattel is situated on a reserve. R.S., c.149, s.88.	If an Indian buys a piece of personal property (such as a car or furniture) on an instalment plan or under a conditional sale agreement, legal ownership of the item remains with the seller until all the instalments are paid. In this situation the seller can seize the item if the purchaser is in default, even if the item is located on a reserve. See Case 24 under Court Decisions on this section.

COURT DECISIONS

Case 19. In Campbell v. Sandy, a 1956 decision, the Ontario County Court ruled that where judgment has been obtained against a reserve Indian, that Indian as a judgment debtor can be examined under the judicial system with respect to the extent of his estate and property both on and off the reserve.

Case 34. In Francis v. The Queen, a 1956 decision, the Supreme Court of Canada decided that a Canadian Indian resident on a reserve is subject to general customs legislation and cannot, therefore, claim exemption for household articles (a washing machine, a refrigerator and an oil heater) imported by him into Canada from the U.S.A. Until such duties are paid, the imported articles may be placed under customs detention/seizure.

Case 38. In Geoffries v. Williams, a 1958 decision, the British Columbia County Court stated that a non-Indian can garnishee a debt owing to an Indian by a corporation, where that debt arose out of a purchase of sawlogs originally felled and bucked off the reserve.

Case 11. In *Beaulieu* v. *Petitpas*, a 1959 decision, the Quebec Superior Court ruled that this section overrides Article 697 i c.c.p., which provides a creditor with a form of execution that the debtor must conform unless that debtor prefers to go to jail. A non-Indian could not garnishee wages earned by an Indian debtor employed and resident on a reserve under the Civil Code.

Case 149. In *Williams* v. *Joe*, a 1973 decision, the British Columbia County Court decided that property owned by an Indian and located on a reserve may be seized by the sheriff under the judicial process in an action by another Indian. In *obiter dictum*, the Court stated that a non-Indian could not get an Order directing the sheriff to seize an Indian's property located on the reserve since it would have the effect of authorizing a trespasser upon the Indian reserve by the sheriff.

Case 125. In *R.* v. *Wesley*, a 1975 decision, the Ontario District Court ruled that in a case where a rifle and a motor vehicle used by an Indian were subject to seizure under the provisions of the provincial *Game and Fish Act* when situated outside a reserve, they were immune from seizure while situated on a reserve by virtue of this section, even though they were used in the commission of an offence under that provincial Act outside of a reserve.

Case 50. In *Kuhn* v. *Starr*, a 1976 decision, the Manitoba Queen's Bench decided that a non-Indian could garnishee moneys deposited in the band's bank account with a credit union located off the reserve, pursuant to the provincial *Garnishment Act* and Queen's Bench Rules, since the location of the money was at the branch where it was deposited, not on the reserve.

Case 66. In *Mintuck* v. *Valley River Band*, a 1977 decision, the Manitoba Queen's Bench stated that subsection 89(1) gives an Indian the benefit of all provincial laws of general application, including the right to garnishee moneys deposited in the band's general account with a bank located off the reserve. Until moneys are advanced by the Department of Indian Affairs and Northern Development and deposited to the credit of the band's account, they are not liable to garnishment by Indians or non-Indians; after their deposit, such moneys lose their status as "public funds" and become subject to garnishment. The anticipated use or contemplated dispersal of the money, by either Parliament or the band council, for the use and benefit of the members of the band as a whole does not prevent the garnishment of such moneys.

Case 13. In Re Bell and Bell, a 1977 decision, the Ontario Supreme Court ruled that this section does not occupy the field of partition and sale, but rather serves to encumber land by restricting the persons that land may be transferred to; that is, it is like a statutory covenant running with the land. Thus, an order under the provincial Partition Act is valid between Indian co-owners of reserve lands. If such an Order provides for a sale to a non-Indian, however, the restrictions and requirements of this Act become operative.

Case 148. In Western Ind. Contr. Ltd. v. Sarcee Developments Ltd., a 1979 decision, the Alberta Supreme Court, Appellate Division, decided that a builders' lien may be filed against a company's leasehold interest in conditionally surrendered reserve lands without affecting the band's reversionary interest in those lands. If such lands are unpatented Crown lands, the Registrar of the provincial Land Titles Office shall record the lien in the day book.

Case 43. In Re Hopkins and Hopkins, a 1980 decision, the Ontario County Court ruled that while this Act does limit the transfer of possession of Indian reserve lands, it does not prevent an order under the provincial Family Law Reform Act granting exclusive possession of the matrimonial home to an Indian spouse upon the breakdown of the marriage. The approval of the Minister of Indian Affairs and Northern Development is needed in order to carry out that order.

Case 24. In Chrysler v. Penagin, a 1981 decision, the Ontario District Court ruled that an assignee under a conditional sales contract can seize and repossess the property that is the subject matter of the contract located on a reserve. Subsection 89(2) indicates that subsection 89(1) is not intended to apply to conditional sales agreements, since title to the property has not passed to an Indian or an Indian band. The words "a person who sells" in this subsection include an assignee of the conditional vendor. That assignee, then, has the same rights as the conditional vendor under that agreement.

INDIAN ACT, Section 90	EXPLANATION
90. (1) For the purposes of sections 87 and 89, personal property that was (a) purchased by Her Majesty with Indian moneys or moneys appropriated by Parliament for the use and benefit of Indians or bands, or	Personal property that was bought by the Department of Indian Affairs and Northern Development with Indian moneys or given to Indians or a band under a treaty shall be said always to be situated on a reserve, even if in fact it is not. For example, a tractor bought by the Department of Indian Affairs and Northern Development with Indian moneys is, in law, always situated on a reserve. This is only for the purposes of sections 87 and 89.
(b) given to Indians or to a band under a treaty or agreement between a band and Her Majesty, shall be deemed always to be situated on a reserve.	See Cases 50, 66, 105, and 40 under Court Decisions on this section.
(2) Every transaction purporting to pass title to any property that is by this section deemed to be situated on a reserve, or any interest in such property, is void unless the transaction is entered into with the consent of the Minister or is entered into between members of a band or between the band and a member thereof.	Basically, any deal, under which property that this section says is always situated on a reserve is sold or given away, is not valid unless: (1) the Minister agrees beforehand, or (2) the deal is between band members or the band and a band member.
(3) Every person who enters into any transaction that is void by virtue of subsection (2) is guilty of an offence, and every person who, without the written consent of the Minister, destroys personal property that is by this section deemed to be situated on a reserve, is guilty of an offence. R.S., c.149, s.89.	It is a crime for anybody, Indian or non-Indian, to make a deal that is not valid under this paragraph. It is a crime to destroy any property that, under the above sections, is said to be always situated on a reserve. This subsection has not been considered by the Courts to our knowledge.

Case 50. In Kuhn v. Starr, a 1976 decision, the Manitoba Queen's Bench ruled that a non-Indian could garnishee moneys deposited in the band's bank account with a credit union located off the reserve, since the location of those moneys was at the branch where those moneys were deposited. Those moneys are not deemed to be situated on the reserve under paragraph 90(1)(a). The words "personal property" do not include money.

Case 66. In Mintuck v. Valley River band, a 1977 decision, the Manitoba Queen's Bench decided that this section serves to increase the instances or circumstances where personal property is deemed to be situated on a reserve. The meaning of "personal property" is restricted and does not include moneys appropriated by the Parliament of Canada. Moneys deposited in the band's general account with a bank located off the reserve may be garnisheed by either an Indian or a non-Indian.

Case 105. In R. v. N.I.B., a 1978 decision, the Federal Court of Canada, Trial Division, stated that this section shows that section 87 is intended to be interpreted according to the ordinary meaning of the words and expressions used in it and that, except where expanded by this section, the exemption is no broader than what actually falls within that meaning. It would be an absurdity to interpret paragraph 90(1)(a) as "personal property that was ...moneys appropriated by Parliament." Grammatically, the words "purchased by Her Majesty with" governed the remainder of that clause. Salaries paid to Indians, then, are not exempt from income tax.

Case 40. In Greyeyes v. R., a 1978 decision, the Federal Court of Canada, Trial Division, ruled that by virtue of paragraph 90(1)(b), an educational scholarship received by an Indian pursuant to an agreement between her band and Ottawa and pursuant to the obligations of the federal government under Treaty #6 is deemed to be "personal property" of an Indian situated on a reserve. It is therefore not subject to income tax.

INDIAN ACT, Section 91	EXPLANATION
TRADING WITH INDIANS	
91. (1) No person may, without the written consent of the Minister, acquire title to any of the following property situated on a reserve, namely:	No one can buy the following items without the consent of the Minister:
(a) an Indian grave house;	(a) an Indian grave house;
(b) a carved grave pole;	(b) a carved pole;
(c) a totem pole;	(c) a totem pole;
(d) a carved house post; or	(d) a carved house post;
(e) a rock embellished with paintings or carvings.	(e) a rock with paintings or carvings on it.
(2) Subsection (1) does not apply to chattels referred to therein that are manufactured for sale by Indians.	However, the agreement of the Minister is not needed if the objects were made for sale by Indians.
(3) No person shall remove, take away, mutilate, disfigure, deface or destroy any chattel referred to in subsection (1) without the written consent of the Minister.	No one can take or damage an item described in subsection (1) without the consent of the Minister.
(4) A person who violates this section is guilty of an offence and is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months. R.S., c.149, s.90.	Anybody who does these things without the agreement of the Minister commits a crime and is liable to a fine of up to two hundred dollars or three months' imprisonment.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 92	EXPLANATION
92. (1) No person who is (a) an officer or employee in the Department, (b) a missionary engaged in mission work among Indians, or (c) a school teacher on a reserve, shall, without a licence from the Minister or his duly authorized representative, trade for profit with an Indian or sell to him directly or indirectly goods or chattels, but no such licence shall be issued to a full-time officer or employee in the Department.	A departmental employee, a missionary, or a school teacher cannot trade for profit with an Indian without a licence from the Minister. If he does trade without a licence he can be fined up to five hundred dollars and if he is a departmental employee he can be fired as well. No licence is to be issued to a full-time departmental employee.
(2) The Minister or his duly authorized representative may at any time cancel a licence given under this section.	The Minister can cancel any licence to trade with Indians at any time.
(3) A person who violates subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars.	
(4) Without prejudice to subsection (3), an officer or employee in the Department who contravenes subsection (1) may be dismissed from office. R.S., c.149, s.91.	

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 93	EXPLANATION
REMOVAL OF MATERIALS FROM RESERVES	
93. A person who, without the written permission of the Minister or his duly authorized representative, (a) removes or permits anyone to remove from a reserve (i) minerals, stone, sand, gravel, clay or soil, or (ii) trees, saplings, shrubs, underbrush, timber, cordwood or hay, or	The Minister can give permission in writing for someone to take minerals, stone, sand, gravel, clay, trees, saplings, shrubs, underbrush, timber, cordwood or hay from a reserve. Anybody who takes these things from a reserve or tells somebody else they can take them without permission in writing from the Minister breaks the law.
(b) has in his possession anything removed from a reserve contrary to this section,	Anybody who has any of these things after they have been taken from a reserve without the Minister's permission also breaks the law.
is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months, or to both. 1956, c.40, s.22.	The punishment is a fine of up to five hundred dollars or jail for not more than three months, or both.

COURT DECISIONS

Case 12. In Beauvais v. Delisle, a 1976 decision, the Federal Court of Canada, Trial Division, ruled that it did not have the jurisdiction to issue an injunction against members of a band council. If it did have jurisdiction, the applicant must prove that: he would suffer permanent losses; he had fulfilled all the conditions allowing him to remove minerals from the Indian reserves under this section; the respondent had intimidated him, his employees, or his customers; the Court had jurisdiction to enjoin the Caughnawaga police (i.e., the Quebec police force), especially where notices of the application had not been served on them; and the police were acting unlawfully when they distributed to the truck drivers (customers) "promises to appear" under this section.

INDIAN ACT, Section 94

94. A person who directly or indirectly by himself or by any other person on his behalf knowingly

(a) sells, barters, supplies or gives an intoxicant to
  (i) any person on a reserve, or
  (ii) an Indian outside a reserve,

(b) opens or keeps or causes to be opened or kept on a reserve a dwelling-house, building, tent, or place in which intoxicants are sold, supplied or given to any person, or

(c) makes or manufactures intoxicants on a reserve,

is guilty of an offence and is liable on summary conviction to a fine of not less than fifty dollars and not more than three hundred dollars or to imprisonment for a term of not less than one month and not more than six months, with or without hard labour, or to both fine and imprisonment. R.S., c.149, s.93.

EXPLANATION

INTOXICANTS

The liquor provisions of the Indian Act are, in general, no longer in force in Canada. Sections 96 and 98 permit major parts of sections 94, 95 and 97 to cease to operate. The provisions that remain, even after sections 96 and 98 are used, are as follows:

(a) It is an offence to supply liquor to anyone on a reserve - s.94(a)(i).

(b) It is an offence to run any kind of a bar on a reserve - s.94(b).

(c) It is an offence for anyone to make liquor on a reserve - s.94(c).

(d) It is an offence for an Indian to be intoxicated off a reserve or to make liquor off a reserve - s.95(b) and (c).

(e) It is an offence for anyone to be intoxicated on a reserve - s.97(b).

There is uncertainty whether even these provisions are still in force because of the decision in Case 90, discussed under Court Decisions on this section.

COURT DECISIONS

Case 90. In R. v. Drybones, a 1969 decision, the Supreme Court of Canada ruled that section 95(b) was inoperative because it was in conflict with the Canadian Bill of Rights. The penalty for an Indian to be intoxicated off a reserve was harsher under the Indian Act than under the liquor laws of the Northwest Territories. This constituted discrimination on the basis of race and was contrary to the Canadian Bill of Rights.

INDIAN ACT, Section 94	EXPLANATION
	This decision could be limited to the Yukon and Northwest Territories, because only in the two northern territories could the Indian Act liquor sections be compared to other federal laws dealing with liquor. The Canadian Bill of Rights only applies to "laws of Canada" and it may not apply where the Indian Act liquor sections can be compared only to provincial laws dealing with liquor. Most observers seem to assume that the decision does apply in the provinces as well as the territories, but the point has not been settled. There have been only three decisions on the liquor sections since 1969.

COURT DECISIONS

Case 127. In R. v. Whiteman (No. 1), a 1970 decision, the Saskatchewan District Court ruled that section 97(b) was not in conflict with the Canadian Bill of Rights since it applied to both Indians and non-Indians.

Case 128. In R. v. Whiteman (No. 2), a 1970 decision, the Saskatchewan District Court ruled that section 95(b) was inoperative because of the Supreme Court of Canada decision in Case 90, R. v. Drybones. As a result, provincial liquor laws did apply to an Indian who was drunk off a reserve.

Case 107. In R. v. Pawis, a 1972 decision, the Ontario District Court ruled that section 97(a) was still in force on a particular reserve and, therefore, provincial liquor laws did not apply.

INDIAN ACT, Section 95	EXPLANATION
95. An Indian who (a) has intoxicants in his possession, (b) is intoxicated, or (c) makes or manufactures intoxicants, off a reserve, is guilty of an offence and is liable on summary conviction to a fine of not less than ten dollars and not more than fifty dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment. R.S., c.149, s.94.	See section 94 for explanation.

COURT DECISIONS

See section 94 for applicable case law.

INDIAN ACT, Section 96	EXPLANATION
96. (1) Subsection (2) or subsection (3) comes into force, or ceases to be in force, in a province or in part thereof only if a proclamation declaring it to be in force, or to cease to be in force, as the case may be, in the province or part thereof is issued by the Governor in Council at the request of the lieutenant governor in council of the province. (2) No offence is committed against subparagraph 94(a)(ii) or paragraph 95(a) if intoxicants are sold to an Indian for consumption in a public place in accordance with the law of the province where the sale takes place. (3) No offence is committed against subparagraph 94(a)(ii) or paragraph 95(a) if intoxicants are sold to or had in possession by an Indian in accordance with the law of the province where the sale takes place or the possession is had. 1956, c.40, s.23.	See section 94 for explanation.

COURT DECISIONS

See section 94 for applicable case law.

INDIAN ACT, Section 97	EXPLANATION
97. A person who is found (a) with intoxicants in his possession, or (b) intoxicated, on a reserve, is guilty of an offence and is liable on summary conviction to a fine of not less than ten dollars and not more than fifty dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment. R.S., c.149, s.96.	See section 94 for explanation.

COURT DECISIONS

See section 94 for applicable case law.

INDIAN ACT, Section 98	EXPLANATION
98. (1) Subsection (2) comes into force, or ceases to be in force, in a reserve only if a proclamation declaring it to be in force, or to cease to be in force, as the case may be, in the reserve, is issued by the Governor in Council. (2) No offence is committed against paragraph 97(a) if intoxicants are had in possession by any person in accordance with the law of the province where the possession is had. (3) A proclamation in respect of a reserve shall not be issued under subsection (1) except in accordance with the wishes of the band, as expressed at a referendum of the electors of the band by a majority of the electors who voted thereat. (4) The Governor in Council may make regulations (a) respecting the taking of votes and the holding of a referendum for the purposes of this section, and (b) defining a reserve for the purposes of subsection (1) to consist of one or more reserves or any part thereof.	See section 94 for explanation.

INDIAN ACT, Section 98	EXPLANATION
(5) No proclamation bringing subsection (2) into force in a reserve shall be issued unless the council of the band has transmitted to the Minister a resolution of the council requesting that subsection (2) be brought into force in the reserve, and either	See section 94 for explanation.
(a) the reserve is situated in a province or part thereof in which subsection 96(3) is in force, or	
(b) the Minister has communicated the contents of the resolution to the attorney general of the province in which the reserve is situated, the lieutenant governor in council of the province has not, within sixty days after such communication, objected to the granting of the request, and the Governor in Council has directed that the wishes of the band with respect thereto be ascertained by a referendum of the electors of the band.	
(6) Where subsection (2) is in force in a reserve no offence is committed against subparagraph 94(a)(ii) or paragraph 95(a) if intoxicants are sold to or had in possession by a member of the band in accordance with the law of the province in which the reserve is situated. 1956, c.40, s.23.	

COURT DECISIONS

See section 94 for applicable case law.

INDIAN ACT, Section 99	EXPLANATION
99. The provisions of this Act relating to intoxicants do not apply where the intoxicant is used or is intended to be used in cases of sickness or accident. R.S., c.149, s.97.	See section 94 for explanation.

COURT DECISIONS

See section 94 for applicable case law.

INDIAN ACT, Section 100	EXPLANATION
100. In any prosecution under this Act the burden of proof that an intoxicant was used or was intended to be used in a case of sickness or accident is upon the accused. R.S., c.149, s.98.	See section 94 for explanation.

COURT DECISIONS

See section 94 for applicable case law.

INDIAN ACT, Section 101	EXPLANATION
101. In every prosecution under this Act a certificate of analysis furnished by an analyst employed by the Government of Canada or by a province shall be accepted as evidence of the facts stated therein and of the authority of the person giving or issuing the certificate, without proof of the signature of the person appearing to have signed the certificate or his official character, and without further proof thereof. R.S., c.149, s.99.	See section 94 for explanation.

COURT DECISIONS

See section 94 for applicable case law.

INDIAN ACT, Section 102	EXPLANATION
102. Every person who is guilty of an offence against any provision of this Act or any regulation made by the Governor in Council or the Minister for which a penalty is not provided elsewhere in this Act or the regulations, is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months, or to both. R.S., c.149, s.100.	See section 94 for explanation.

COURT DECISIONS

See section 94 for applicable case law.

INDIAN ACT, Section 103

FORFEITURES AND PENALTIES

103. (1) Whenever a peace officer or a superintendent or a person authorized by the Minister believes on reasonable grounds that an offence against section 33, 90, 93, 94, 95 or 97 has been committed, he may seize all goods and chattels by means of or in relation to which he reasonably believes the offence was committed.

(2) All goods and chattels seized pursuant to subsection (1) may be detained for a period of three months following the day of seizure unless during that period proceedings under this Act in respect of such offence are undertaken, in which case the goods and chattels may be further detained until such proceedings are finally concluded.

(3) Where a person is convicted of an offence against the sections mentioned in subsection (1), the convicting court or judge may order that the goods and chattels by means of or in relation to which the offence was committed, in addition to any penalty imposed, are forfeited to Her Majesty and may be disposed of as the Minister directs.

EXPLANATION

If a policeman or a departmental employee has good reason to think that the law has been broken under:

> section 90 - selling band property;
>
> section 93 - taking gravel and trees and other materials off a reserve without the permission of the Department of Indian Affairs and Northern Development; or
>
> sections 94, 95 and 97 - intoxicants

then he can confiscate the goods for either three months or until any court case concerning them is concluded. If, in the court case, the person is found guilty of breaking the law, then the judge can order the government to keep the goods, to be disposed of later as the Minister sees fit.

(See Disposal of Forfeited Goods and Chattels Regulations, C.R.C. 1978, c.948.)

INDIAN ACT, Section 103	EXPLANATION
(4) A justice who is satisfied by information upon oath that there is reasonable ground to believe that there are upon a reserve or in any building, receptacle or place any goods or chattels by means of or in relation to which an offence against any of the sections mentioned in subsection (1) has been, is being or is about to be committed, may at any time issue a warrant under his hand authorizing a person named therein or a peace officer at any time to search the reserve, building, receptacle or place for any such goods or chattels. R.S., c.149, s.101; 1952-53, c.41, s.5; 1956, c.40, s.24.	A search warrant can be issued to allow a police officer or other person named in the warrant to search any place for goods that may be involved in the law being broken under sections 33, 90, 93, 94, 95 or 97.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 104	EXPLANATION
104. Every fine, penalty or forfeiture imposed under this Act belongs to Her Majesty for the benefit of the band with respect to which or to one or more members of which the offence was committed or to which the offender, if an Indian, belongs, but the Governor in Council may from time to time direct that the fine, penalty or forfeiture shall be paid to a provincial, municipal or local authority that bears in whole or in part the expense of administering the law under which the fine, penalty or forfeiture is imposed, or that the fine, penalty or forfeiture shall be applied in the manner that he considers will best promote the purposes of the law under which the fine, penalty or forfeiture is imposed, or the administration of that law. R.S., c.149, s.102.	When a person breaks the law under the Indian Act, any fine he pays or any goods that are confiscated are held by the Department of Indian Affairs and Northern Development for the benefit of the band in respect of whom the law was broken. If the person who broke the law was an Indian, then the fines or goods are held by the Department of Indian Affairs and Northern Development for the use of his band. However, the government can say that the fines or the confiscated goods are to go to the local law enforcement authority to help pay its costs. The government can also say that the fines or confiscated goods can be used for the purpose of upholding the law that was broken.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 105	EXPLANATION
105. In any order, writ, warrant, summons or proceeding issued under this Act it is sufficient if the name of the person or Indian referred to therein is the name given to, or the name by which the person or Indian is known by, the person who issues the order, writ, warrant, summons or proceedings, and if no part of the name of the person is given to or known by the person issuing the order, writ, warrant, summons, or proceedings, it is sufficient if the person or Indian is described in any manner by which he may be identified. R.S., c.149, s.103.	In any court proceedings (for example, a court order, a summons or a search warrant) the Indian concerned may be referred to by his name or by the name he is known by. If his name is not known, then it is all right to describe him in such a way that he can be easily identified.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 106	EXPLANATION
106. A police magistrate or a stipendiary magistrate has and may exercise, with respect to matters arising under this Act, jurisdiction over the whole county, union of counties or judicial district in which the city, town or other place for which he is appointed or in which he has jurisdiction under provincial laws is situated. R.S., c.149, s.104.	A magistrate has the power to decide cases arising from the *Indian Act* in the entire district in which he has power to decide cases under provincial law.

COURT DECISIONS

Case 86. In *R.* v. *Crosby*, a 1980 decision, the Ontario Court of Appeal ruled that this section should not be considered the basis of jurisdiction for trial of offences created under this Act. Since the jurisdiction of these magistrates is limited to a particular town or portion of a county, they would normally have no jurisdiction over an offence committed on a reserve. The intention of this section, then, was to broaden the territorial jurisdiction of such magistrates. In provinces such as Ontario, where such magistrates have been abolished, the Provincial Court Judge has jurisdiction to try such conviction offences as trespassing on a reserve contrary to section 30 of this Act.

INDIAN ACT, Section 107	EXPLANATION
107. The Governor in Council may appoint persons to be, for the purposes of this Act, justices of the peace and those persons have and may exercise the powers and authority of two justices of the peace with regard to	The government can appoint people to be Justices of the Peace for the purposes of this Act. Two such people have the authority to:
(a) offences under this Act, and	(a) decide cases under this Act where people are charged with breaking the law; and
(b) any offence against the provisions of the Criminal Code relating to cruelty to animals, common assault, breaking and entering and vagrancy, where the offence is committed by an Indian or relates to the person or property of an Indian. R.S., c.149, s.105; 1956, c.40, s.25.	(b) decide cases under the Criminal Code about cruelty to animals, common assault, breaking and entering and vagrancy where the law was broken by an Indian or the matter involved an Indian or his property.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 108	EXPLANATION
108. For the purposes of this Act or any matter relating to Indian affairs	For the purposes of the *Indian Act* and any matter relative to Indian affairs the following people are, by virtue of their office, Justices of the Peace for the taking of oaths:
(a) persons appointed by the Minister for the purpose,	(a) persons appointed by the Minister for that job;
(b) superintendents, and	(b) superintendents;
(c) the Minister, Deputy Minister and the chief officer in charge of the branch of the Department relating to Indian affairs,	(c) the Minister, Deputy Minister and the person in charge of the Indian Affairs sector of the Department.
are *ex officio* commissioners for the taking of oaths. R.S., c.149, s.107.	

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 109

ENFRANCHISEMENT

109. (1) On the report of the Minister that an Indian has applied for enfranchisement and that in his opinion the Indian

(a) is of the full age of twnety-one years,

(b) is capable of assuming the duties and responsibilities of citizenship, and

(c) when enfranchised, will be capable of supporting himself and his dependants,

the Governor in Council may by order declare that the Indian and his wife and minor unmarried children are enfranchised.

(2) On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman is enfranchised as of the date of her marriage and, on the recommendation of the Minister may by order declare that all or any of her children are enfranchised as of the date of the marriage or such other date as the order may specify.

EXPLANATION

The term "enfranchisement" is out of date. It means the gaining of the right to vote. Indians gained the right to vote in federal elections in 1960 without the loss of Indian Act rights. They also have the right to vote in provincial elections. The Indian Act, however, retains the term "enfranchisement" to describe the loss of the legal status established for individuals by the Indian Act. Section 110 states that after enfranchisement an individual shall not be considered to be an Indian for the purposes of the Indian Act or any other statute or law.

Section 109(1) describes the process of voluntary enfranchisement. The Minister must be satisfied that an individual is at least 21, is capable of assuming the duties and responsibilities of citizenship and can support himself or herself and his or her dependents. The actual enfranchisement order is made by the Governor in Council (that is, by a decision of the federal cabinet). In practice there are very few, if any, true voluntary enfranchisements today.

INDIAN ACT, Section 109	EXPLANATION
(3) Where in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and his minor children who are living with the wife shall not be included in an order under subsection (1) that enfranchises the Indian unless the wife has applied for enfranchisement, but where the Governor in Council is satisfied that such wife is no longer living apart from her husband, the Governor in Council may by order declare that the wife and the minor children are enfranchised. (4) A person is not enfranchised unless his name appears in an order of enfranchisement made by the Governor in Council. R.S., c.149, s.108; 1956, c.40, s.26.	Section 109(2) deals with the situation where a woman with Indian status marries a man who does not have Indian status. The federal cabinet may order that she is enfranchised as of the date of her marriage. The cabinet may also order that her children be enfranchised as of the date of her marriage or as of some other date. By section 12(1)(b) a woman with Indian status who marries a man who does not have Indian status is not entitled to be registered as an Indian under the Indian Act. There has been some uncertainty as to why section 109(2) was included in the Act when section 12(1)(b) existed. It has been argued that section 109(2) was necessary because section 12(1)(b) did not authorize the removal of any name from the Indian register. But sections 12(1)(a)(iv) and 12(2) clearly involve removing names from the Indian register and have similar wording to section 12(1)(b). For that reason a court could be expected to rule that 12(1)(b) gave authority for the removal of the name of the woman from the register. Perhaps, then, section 109(2) is really concerned with the children of the woman. Section 10 allows children to be dropped from the Indian register when a man loses status. Section 109(2) is the equivalent section when a woman loses status by marriage.

INDIAN ACT, Section 109

EXPLANATION

It should be noted that a child does not necessarily lose status when a parent is voluntarily enfranchised under section 109(1) or when its mother is ordered enfranchised under section 109(2). Both sections use the permissive word "may" and not the mandatory word "shall" found in section 10.

The practice of the Department of Indian Affairs and Northern Development for many years has been to ask a woman with Indian status who has married a man without Indian status to sign a voluntary enfranchisement application under section 109(1). Some women have refused to sign such an application and an order under section 109(2) has not been made. These women's names remain on the Indian register but they are not regarded as status Indians by the Department of Indians Affairs and Northern Development. Case 15, *Boadway* v. *M.N.R.*, described under Court Decisions on section 2(1) "Indian", deals with such a situation and confirms the policy of the Department of Indian Affairs and Northern Development to treat such a woman as not being a status Indian.

Section 109(3) provides that when the wife and minor children of a status Indian man are living apart from the man, they will not be included in the voluntary enfranchisement of the man under section 109(1). If the wife returns to the man, she and the minor children may be enfranchised.

COURT DECISIONS

See decisions as noted above.

INDIAN ACT, Section 110	EXPLANATION
110. A person with respect to whom an order for enfranchisement is made under this Act shall, from the date thereof, or from the date of enfranchisement provided for therein, be deemed not to be an Indian within the meaning of this Act or any other statute or law. 1956, c.40, s.27.	After enfranchisement an individual shall not be considered to be an Indian for the purposes of the *Indian Act* or any other statute or law. This section would be effective in relation to federal laws (such as the *Indian Act* and the *Fisheries Act*). It is not clear whether it would be effective in relation to provincial laws. Certain provincial hunting laws make specific reference to Indians. It is also not clear whether this section would be effective in relation to constitutional provisions. This last question arose in three cases in Saskatchewan where non-status Indians have claimed rights to hunt under the terms of the Natural Resources Transfer Agreement of 1930. This agreement and similar agreements in Alberta and Manitoba were made part of the constitution in 1930 and provide that Indians in those provinces have the right to hunt for food at all times of the year. Cases 111, *R.* v. *Pritchard*; 101, *R.* v. *Laprise*; and 84, *R.* v. *Budd*; *R.* v. *Crane*, hold that it was the intention in 1930 to limit the rights involved to registered Indians under the *Indian Act*. While the decisions did not rely on section 110, they came to the same conclusion as they would have if section 110 could have applied.

COURT DECISIONS

See decisions as noted above.

INDIAN ACT, Section 111	EXPLANATION
111. (1) Upon the issue of an order of enfranchisement, any interest in land and improvements on an Indian reserve of which the enfranchised Indian was in lawful possession or over which he exercised rights of ownership, at the time of his enfranchisement, may be disposed of by him by gift or private sale to the band or another member of the band, but if not so disposed of within thirty days after the date of the order of enfranchisement such land and improvements shall be offered for sale by tender by the superintendent and sold to the highest bidder and the proceeds of such sale paid to him; and if no bid is received and the property remains unsold after six months from the date of such offering, the land, together with improvements, shall revert to the band free from any interest of the enfranchised person therein, subject to the payment, at the discretion of the Minister, to the enfranchised Indian, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.	Once enfranchised, an Indian can sell or give away any piece of reserve land that he owned to the band or another band member. If he has not disposed of it within thirty days after the enfranchisement order is granted, then the superintendent shall offer the land for sale to the highest bidder and pay the money to the enfranchised Indian. If no bid is made and the land is still unsold six months after it was put up for sale, then the land goes back to the band. In this case, the Department of Indian Affairs and Northern Development can pay the Indian an amount considered proper for buildings, fences and other improvements made on the land by the Indian. The money is paid out of band funds.
(2) When an order of enfranchisement issues or has issued, the Governor in Council may, with the consent of the council of the band, by order declare that any lands within a reserve of which the enfranchised Indian had formerly been in lawful possession shall cease to be Indian reserve lands.	If the band council agrees, the government can order that the reserve land owned by the enfranchised Indian shall cease to be reserve land. In this case, the Indian shall pay into the band funds what the Minister thinks the communal share of the band in the land was worth.

INDIAN ACT, Section 111	EXPLANATION
(3) When an order has been made under subsection (2), the enfranchised Indian is entitled to occupy such lands for a period of ten years from the date of his enfranchisement, and the enfranchised Indian shall pay to the funds of the band, or there shall, out of any money payable to the enfranchised Indian under this Act, be transferred to the funds of the band, such amount per acre for the lands as the Minister considers to be the value of the common interest of the band in the lands.	The enfranchised Indian shall be allowed to live on the land for ten years after he has been enfranchised. At the end of ten years the Minister will grant him legal title to the land.
(4) At the end of the ten-year period referred to in subsection (3) the Minister shall cause a grant of the lands to be made to the enfranchised Indian or to his legal representatives. R.S., c.149, s.110.	

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 112	EXPLANATION
112. (1) Where the Minister reports that a band has applied for enfranchisement, and has submitted a plan for the disposal or division of the funds of the band and the lands in the reserve, and in his opinion the band is capable of managing its own affairs as a municipality or part of a municipality, the Governor in Council may by order approve the plan, declare that all the members of the band are enfranchised, either as of the date of the order or such later date as may be fixed in the order, and may make regulations for carrying the plan and the provisions of this section into effect.	The government can make an order saying that all the members of a band are enfranchised if the Minister has made a report saying: (1) the band has asked to be enfranchised, (2) the band has given the Department of Indian Affairs and Northern Development a plan of how the band funds and reserve lands are to be divided, and (3) the band is capable of managing its own affairs as a municipality or part of a municipality.
(2) An order for enfranchisement may not be made under subsection (1) unless more than fifty per cent of the electors of the band signify, at a meeting of the band called for the purpose, their willingness to become enfranchised under this section, and their approval of the plan.	A whole band cannot be enfranchised unless more than half the electors of the band vote in favour of it and the plan at a band meeting called for that purpose.
(3) The Governor in Council may, for the purpose of giving effect to this section, authorize the Minister to enter into an agreement with a province or a municipality, or both, upon such terms as may be agreed upon by the Minister and the province or municipality, or both.	In the order saying that the band is enfranchised, the government may approve the band's plan for dividing up the land and band funds. The government can make regulations so the plan and this section can be given effect. To give effect to this section, the Minister can enter into an agreement with a province or a municipality.

INDIAN ACT, Section 112	EXPLANATION
(4) Without restricting the generality of subsection (3), an agreement made thereunder may provide for financial assistance to be given to the province or the municipality or both to assist in the support of indigent, infirm or aged persons to whom the agreement applies, and such financial assistance, or any part thereof, shall, if the Minister so directs, be paid out of moneys of the band, and any such financial assistance not paid out of moneys of the band shall be paid out of moneys appropriated by Parliament. R.S., c.149, s.111.	Among the items that could be covered by such an agreement are arrangements to provide the province or municipality with financial assistance to take care of people who are sick or old or otherwise unable to take care of themselves after the band has been enfranchised. The money to do this could come from band funds or be appropriated by Parliament.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 113	EXPLANATION
113. (1) Where a band has applied for enfranchisement within the meaning of this Act and has submitted a plan for the disposal or division of the funds of the band and the lands in the reserve, the Minister may appoint a committee to inquire into and report upon any or all of the following matters, namely:	When a band has applied for enfranchisement and has given the Minister a plan about what is to become of the band's funds and the reserve lands, the Minister can set up a committee to report on the following:
(a) the desirability of enfranchising the band;	(a) whether or not it is a good idea to enfranchise the band;
(b) the adequacy of the plan submitted by it; and	(b) whether or not the plan given to the Minister is a good one; and
(c) any other matter relating to the application for enfranchisement or to the disposition thereof.	(c) anything else connected with enfranchisement.
(2) A committee appointed under subsection (1) shall consist of	The committee shall consist of:
(a) a judge or retired judge of a superior, surrogate, district or county court;	(a) a judge or retired judge;
(b) an officer of the Department, and	(b) a departmental employee; and
(c) a member of the band to be designated by the council of the band. 1960-61, c.9, s.1.	(c) a band member chosen by the band council.

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

INDIAN ACT, Section 114	EXPLANATION
SCHOOLS 114. (1) The Governor in Council may authorize the Minister, in accordance with this Act, to enter into agreements on behalf of Her Majesty for the education in accordance with this Act of Indian children, with (a) the government of a province, (b) the Commissioner of the Northwest Territories, (c) the Commissioner of the Yukon Territory, (d) a public or separate school board, and (e) a religious or charitable organization. (2) The Minister may, in accordance with this Act, establish, operate and maintain schools for Indian children. 1956, c.40, s.28.	In most parts of Canada Indian children have been integrated into the regular provincial and territorial school systems. The most important documents governing Indian education are the agreements on Indian education entered into by the federal government with various provinces, local school boards and Indian bands. These agreements and the patterns of government funding are the real framework for Indian education, not sections 114 to 123 of the Indian Act. Present patterns allow some examples of Indian-controlled schools in reserve communities.

COURT DECISIONS

Case 18. In Cache Creek Motors Ltd. v. Porter, a 1979 decision, the British Columbia County Court ruled that when responsibility is not specifically assigned to the Minister under the education sections, a band is free to act on its own behalf. In this case a band was free to enter into a contract to obtain school bus transportation for the reserve children.

Case 79.1. In R. v. B., a 1982 decision, the Ontario Provincial Court ruled that section 120(b) was inoperative on the basis of conflict with the Canadian Bill of Rights. This provision, which declared a child to be a juvenile delinquent for failure to attend school regularly, was held to be discriminatory on the basis of race.

INDIAN ACT, Section 115	EXPLANATION
115. The Minister may (a) provide for and make regulations with respect to standards for buildings, equipment, teaching, education, inspection and discipline in connection with schools; (b) provide for the transportation of children to and from school; (c) enter into agreements with religious organizations for the support and maintenance of children who are being educated in schools operated by those organizations; and (d) apply the whole or any part of moneys that would otherwise be payable to or on behalf of a child who is attending a residential school to the maintenance of that child at that school. R.S., c.149, s.114.	See section 114 for explanation.

COURT DECISIONS

See section 114 for applicable case law.

INDIAN ACT, Section 116	EXPLANATION
116. (1) Subject to section 117, every Indian child who has attained the age of seven years shall attend school. (2) The Minister may (a) require an Indian who has attained the age of six years to attend school; (b) require an Indian who becomes sixteen years of age during the school term to continue to attend school until the end of that term; and (c) require an Indian who becomes sixteen years of age to attend school for such further period as the Minister considers advisable, but no Indian shall be required to attend school after he becomes eighteen years of age. R.S., c.149, s.115; 1956, c.40, s.29.	See section 114 for explanation.

COURT DECISIONS

See section 114 for applicable case law.

INDIAN ACT, Sections 117, 118	EXPLANATION
117. An Indian child is not required to attend school if the child (a) is, by reason of sickness or other unavoidable cause that is reported promptly to the principal, unable to attend school; (b) is, with the permission in writing of the superintendent, absent from school for a period not exceeding six weeks in each term for the purpose of assisting in husbandry or urgent and necessary household duties; (c) is under efficient instruction at home or elsewhere, within one year after the written approval by the Minister of such instruction; or (d) is unable to attend school because there is insufficient accommodation in the school that the child is entitled or directed to attend. R.S., c.149, s.116; 1956, c.40, s.30. 118. Every Indian child who is required to attend school shall attend such school as the Minister may designate, but no child whose parent is a Protestant shall be assigned to a school conducted under Roman Catholic auspices and no child whose parent is a Roman Catholic shall be assigned to a school conducted under Protestant auspices, except by written direction of the parent. R.S., c.149, s.117.	See section 114 for explanation.

COURT DECISIONS

See section 114 for applicable case law.

INDIAN ACT, Section 119	EXPLANATION
119. (1) The Minister may appoint persons, to be called truant officers, to enforce the attendance of Indian children at school, and for that purpose a truant officer has the powers of a peace officer. (2) Without restricting the generality of subsection (1), a truant officer may (a) enter any place where he believes, on reasonable grounds, that there are Indian children who are between the ages of seven and sixteen years of age, or who are required by the Minister to attend school; (b) investigate any case of truancy; and (c) serve written notice upon the parent, guardian or other person having the care or legal custody of a child to cause the child to attend school regularly thereafter. (3) Where a notice has been served in accordance with paragraph (2)(c) with respect to a child who is required by this Act to attend school, and the child does not within three days after the service of notice attend school and continue to attend school regularly thereafter, the person upon whom the notice was served is guilty of an offence and is liable on summary conviction to a fine of not more than five dollars or to imprisonment for a term not exceeding ten days, or to both.	See section 114 for explanation.

INDIAN ACT, Section 119	EXPLANATION
(4) Where a person has been served with a notice in accordance with paragraph (2)(c), it is not necessary within a period of twelve months thereafter to serve that person with any other notice in respect of further non-compliance with the provisions of this Act, and whenever such person within the period of twelve months fails to cause the child with respect to whom the notice was served or any other child of whom he has charge or control to attend school and continue in regular attendance as required by this Act, such person is guilty of an offence and liable to the penalties imposed by subsection (3) as if he had been served with the notice. (5) A child who is habitually late for school shall be deemed to be absent from school. (6) A truant officer may take into custody a child whom he believes on reasonable grounds to be absent from school contrary to this Act and may convey the child to school, using as much force as the circumstances require. R.S., c.149, s.118.	

COURT DECISIONS

See section 114 for applicable case law.

INDIAN ACT, Sections 120, 121	EXPLANATION
120. An Indian child who (a) is expelled or suspended from school, or (b) refuses or fails to attend school regularly, shall be deemed to be a juvenile delinquent within the meaning of the Juvenile Delinquents Act. R.S., c.149, s.119. 121. (1) Where the majority of the members of a band belongs to one religious denomination, the school established on the reserve that has been set apart for the use and benefit of that band shall be taught by a teacher of that denomination. (2) Where the majority of the members of a band are not members of the same religious denomination and the band by a majority vote of those electors of the band who were present at a meeting called for the purpose requests that day schools on the reserve should be taught by a teacher belonging to a particular religious denomination, the school on that reserve shall be taught by a teacher of that denomination. R.S., c.149, s.120.	See section 114 for explanation.

COURT DECISIONS

See section 114 for applicable case law.

INDIAN ACT, Sections 122, 123	EXPLANATION
122. A Protestant or Roman Catholic minority of any band may, with the approval of and under regulations to be made by the Minister, have a separate day school or day school classroom established on the reserve unless, in the opinion of the Governor in Council, the number of children of school age does not so warrant. R.S., c.149, s.121. 123. In sections 114 to 122 "child" means an Indian who has attained the age of six years but has not attained the age of sixteen years, and a person who is required by the Minister to attend school; "school" includes a day school, technical school, high school and residential school; "truant officer" includes (a) a member of the Royal Canadian Mounted Police; (b) a special constable appointed for police duty on a reserve; and (c) a school teacher and a chief of the band, when authorized by the superintendent. R.S., c.149, s.122.	See section 114 for explanation.

COURT DECISIONS

See section 114 for applicable case law.

INDIAN ACT, Section 124	EXPLANATION
PRIOR GRANTS	
124. Where, prior to the 4th day of September 1951, a reserve or portion of a reserve was released or surrendered to the Crown pursuant to Part I of the Indian Act, chapter 98 of the Revised Statutes of Canada, 1927, or pursuant to the provisions of the statutes relating to the release or surrender of reserves in force at the time of the release or surrender, and	Where reserve land was surrendered before September 4, 1951 under a previous Indian Act and was granted to a person before that date, then the grant shall be treated as if it had been made under this Act.
(a) prior to that date Letters Patent under the Great Seal were issued purporting to grant a reserve or portion of a reserve so released or surrendered, or any interest therein, to any person, and the Letters Patent have not been declared void or inoperative by any Court of competent jurisdiction, or	
(b) prior to that date a reserve or portion of a reserve so released or surrendered, or any interest therein, was sold or agreed to be sold by the Crown to any person, and the sale or agreement for sale has not been cancelled or by any Court of competent jurisdiction declared void or inoperative,	Where reserve land was surrendered before September 4, 1951 under a previous Indian Act and was, before that date, sold or agreed to be sold, then the sale or agreement to sell shall be treated as if they had been made under this Act.

INDIAN ACT, Section 124	EXPLANATION
the Letters Patent or the sale or agreement for sale, as the case may be, shall for all purposes, be deemed to have been issued or made at the date thereof under the direction of the Governor in Council. 1952-53, c.41, s.6.	

COURT DECISIONS

This section has not been considered by the Courts to our knowledge.

GLOSSARY

Aboriginal Title	- a type of title of Indians based on continuous occupancy and use to the exclusion of others
Abridge	- to shorten; to lessen or curtail
Abrogate	- to cancel or repeal
Absolute	- complete, final and unconditional
Accused	- defendant in a criminal case
Acquisition	- the act of becoming the owner of certain property
Acquittal	- a finding of not guilty of a criminal charge
Administrator/ Administratrix	- a person appointed by the Minister or the Court to manage and distribute the possessions of someone who has died and to pay all his debts in a case where the person died without a will or without naming a person in his will to perform those services. Administrator is used if the person is male, and administratrix is used if the person is female.
Admissible	- that which can properly be accepted or allowed; as in 'admissible evidence'
Adoption	- to take into your family the child of another and to give that child the rights, duties, and privileges of a natural child and heir
Adultery	- voluntary sexual intercourse of a married person with someone other than his or her spouse
Adverse Possession	- squatter's rights; a method of acquiring title to land upon proof of non-permissive possession and use that is actual, open, notorious, exclusive and adverse for a statutory period (e.g., 60 years)
Affidavit	- evidence; a written or printed statement of facts made voluntarily and confirmed by the oath or affirmation of the party making it and taken before a person having authority to administer such an oath or affirmation
Alienation	- a voluntary and complete transfer of land from one person to another by will or any other method

Allot	- to set aside specific property or a share in a fund for a specific person
Amalgamation	- a union of different races or bands so as to form a new body
Ancillary	- subordinate; helping; serving as an aid
Annuity	- a right to receive fixed, periodic payments, either for life or for a certain period of time
Appeal	- the resort to a higher or superior court to review the decision of a lower or inferior court or administrative agency
Appellant	- the party who takes an appeal from one court or jurisdiction to another
Appropriate	- to make a thing one's own
Arrears	- money that is overdue and unpaid and still owing by one person to another
Assignee	- a person to whom a claim, right or property is transferred
Attachment	- the act or process of taking, apprehending, or seizing a debtor's property under a writ or other Court order, and bringing same into the custody of the Court for the purpose of paying off a judgment debt
Auspices	- approval and support; a guiding sponsorship
Bargaining Agent	- a union recognized and certified under the Labour Code as the sole representative of a certain group of employees
Barter	- to trade by exchanging goods or services
Beneficial Interest	- the profit, benefit or advantage resulting from a contract; the ownership and possession of an estate or land where legal title or ownership remains in a trustee or the Crown
Beneficiary	- the recipient of a bequest or devise under a will
Bequest	- a gift by will of personal property
Breach of Contract	- failure to comply with a certain term or terms of a contract or agreement

Builder's Lien	- a charge upon land or property for the satisfaction of some debt or duty arising by statute (also known as a mechanic's lien)
Canada Gazette	- a government publication setting out amendments, regulations and notices pertaining to federal statutes or matters
Certificate of Lis Pendens	- a legal document giving notice to others of a pending Court action
Certification	- a formal designation by the Labour Relations Board that a union represents a majority of a group of employees
Charge	- in criminal law, the accusation of a crime by a formal complaint, information or indictment
Chattel	- a movable item of personal property (e.g., furniture, automobile, livestock)
Cistern	- a large tank, usually underground, used for storing water
Citation	- legal reference to a statute, case, etc.
Civil	- in law, a matter relating to the private rights of and to legal actions between individuals or corporations
Clerical	- relating to office clerks or their work
Collective Bargaining	- negotiation between an employer and a representative of employees for the purpose of determining by joint agreement the conditions (e.g., wages, hours of work) of employment
Common Law	- that part of the law of England formulated, developed and administered by the old common law courts; based originally on the common customs of the country and unwritten
Compensation	- indemnification; payment of money or the giving of a substitute of equal value for property taken or for an injury done to another
Conditional	- that which is dependent upon or granted subject to a condition (a future and uncertain event, the occurrence of which is made to depend the existence of some obligation)

Conflict of Interest	- clash between the public or community interests and the private or personal business interests of a person holding a public office; disqualifies that person from performing his duties in respect of the matter where the clash arose
Consanguinity	- blood relationship; the connection or relation of persons descended from a common ancestor
Consecutive	- successive; following in order without interruption
Consumption	- the using up of goods or services
Contingent	- conditioned upon the occurrence of some future event that is itself uncertain
Contract	- an agreement between two or more persons that creates a legal obligation to do or not to do a particular thing
Contravene	- oppose; conflict with
Conviction	- in criminal law, the finding of guilty of a criminal charge
Corporation	- a separate legal entity composed of shareholders and officers who perform the work for which the company was created
Creditor	- a person to whom a debt is owed
Crown (federal/ provincial)	- refers to the Queen in Right of the Dominion of Canada or the Queen in Right of a particular Province; more simply, the Government of Canada or the Government of Alberta, etc.
Custody	- in family law, the care, control and maintenance of a child; may be awarded by a Court to one of the parents, as in a divorce or separation action
Damages	- money paid to a person at the direction of the Court to compensate him for any injury or loss suffered by him as a result of the wrongful act of the person who is ordered to pay the sum of money
Debt	- a sum of money owing to one person by another; enforceable by legal action
Debtor	- a person who owes a debt to another

Default	- the omission or failure to perform a legal or contractual duty
Defendant	- the party against whom relief or recovery is sought in an action
Descent	- transfer of property to heirs or children by inheritance
Devise	- a gift of land by the will of the deceased
Disposition	- parting with, alienation of, giving up, sale of or transfer of property to another
Distrain	- to seize property and hold it as security for a debt
Distress	- the right of a landlord through Court proceedings to seize a tenant's property to satisfy arrears of rent
Dower	- an interest in a deceased husband's lands that the law grants to the widow (usually 1/3 or a life estate)
Duress	- compulsion; use of force or threats
Easement	- a right or privilege that a person may have in respect of another person's lands, e.g., a right-of-way
Eligible	- legally qualified
Embellished	- decorated; adorned
Encompass	- include or contain
Encumbrance	- a claim, lien, charge, or liability attached to and binding land (e.g., mortgage, lien, easement, lease, etc.)
Enfranchisement	- the act of making free (such as the process of ceasing to be a status Indian)
Enjoin	- to forbid or command
Equitable Relief	- primary fairness or natural justice; that type of relief sought in a Court with equity powers (e.g., injunction or specific performance)
Equity Powers	- ability of the Court to make decisions based on fairness, as opposed to the strict and often harsh rules of common law

Estate	- the extent of interest that a person has in personal property and in real property
Estate by Curtesy	- the interest in land the husband is entitled to upon the death of his wife, where the wife owned that property
Estranged	- separated; treated as a stranger
Examination-in-Aid of Execution	- after judgment has been obtained, an interrogation of the debtor under oath to determine the nature and extent and location of his real and personal property
Executor/ Executrix	- person appointed by someone making a will to carry out the directions and requests in his will and to dispose of his property according to his written wishes after his death (executor if the person is male, executrix if the person is female)
Exempt	- not subject to or bound by a rule, duty or obligation applying to other persons
Expenditure	- a spending of money
Expropriation	- compulsorily depriving a person of a right of property belonging to him, with compensation
Fee Simple	- owner is entitled to the entire property with unconditional power of disposition during his lifetime or by his will, and descending to his heirs and legal representatives upon his death without a will
Fiscal Year	- a 12-month period between settlements and accounting of finances
Forfeiture	- something (such as a deposit of money) to which the right is lost by the commission of a crime, fault or nonperformance of some obligation or condition, or the losing of something by way of a penalty
Garnishment	- a legal proceeding in which a debtor's property, money or credits in possession or under the control of, or owing by, a third party are applied to the payment of the debtor's debt
Grant in fee simple	- absolute transfer of land to a person and his heirs and assigns forever, without limitation or condition
Gratuitous	- free; given or received without charge or payment

Guardian	- a person legally appointed to care for a person or child or for the property of a person who is not able to act for himself
Heir	- person legally entitled to inherit real and personal property of a person either under a will or under the law
Hereditary	- of or passed down by inheritance from an ancestor to a legal heir
Husbandry	- farming
Illegitimate	- child born out of lawful wedlock (i.e., when his biological parents, though alive, are not married to each other)
Impediment	- anything that hinders or delays; an obstacle
Imposition	- the forcing of something on another without invitation or right
Imprisonment	- to put or keep in prison or jail
In lieu of	- instead of
Indictable Offence	- in criminal law, it is a more serious crime committed by a person
Indigent	- in poverty; needy; unable or unwilling to support oneself
Injunction	- an order by which a person is required to do, or refrain from doing, a particular thing. It can be either interlocutory (interim and temporary) or perpetual (permanent)
Interlocutory	- interim or temporary; something intervening between the commencement and end of a law suit
Intestate	- a person who dies leaving property undisposed of by will
Intimidation	- to take or attempt to take by putting in fear of bodily harm; unlawful coercion; extortion
Intoxicated	- inebriated; drunk
Intra Vires	- "within the power and jurisdiction" and scope of authority of a legislative body, person or corporation

Irregularities	- not conforming with legal requirements
Issue	- lineal descendants (children, grandchildren, etc.)
Judgment	- decision of the Court
Judgment Debt	- where a court has decided the amount of money owed by one person to another
Judicial	- relating to or connected with the administration of justice or the proceedings of the Courts of justice
Jurisdiction	- right and power of a Court to hear and decide upon the subject matter of a particular case before it
Justice	- judge of the higher courts of the province or country
Lawful Justification	- just excuse or reason for an act or for ceasing to act
Leasehold interest	- the interest a person has in an estate in land held under a lease
Legacy	- a gift of money or goods under a will
Legitimate	- child born in lawful wedlock (i.e., when his biological or natural parents are married at the time of his birth or subsequently become married)
Letters of Administration	- document issued by a Probate or Surrogate Court authorizing a specified person to manage the estate of a person who has died without a will or without naming an executor in the will
Letters Patent	- the original grant of land by the Crown to another
Liability	- all character of debts and obligations
Lis Pendens	- see "Certificate of Lis Pendens"
Locatee	- a person who is physically found or entitled to be physically in possession of a particular piece of land
Locus standi	- right to be heard in a Court or other proceeding
Lower Court	- inferior court where an action may be first heard; court from which an appeal is taken; e.g., the Court of Queen's Bench of Alberta is a lower or inferior court to the Alberta Court of Appeal

Magistrate	- judge of the Police or Magistrate's Court of a province; equivalent to the position of the judge of the Provincial Court found in some provinces
Maintenance	- monetary support for spouse or children that can be enforced by the Courts
Malfeasance	- wrongdoing or misconduct, especially by a public official
Mandatory Injunction	- an order of the Court commanding a party in a court action to do some positive act or particular thing, or prohibiting him from refusing to do or permit some act to which the other party has a legal right, or restraining him from permitting his previous wrongful act to continue
Matrimonial Home	- house that a husband and wife live in during their marriage
Mentally Incompetent	- a person who is unable to understand and rationally handle the ordinary affairs of life
Minor Child	- a child under the age of majority in the Province where he or she lives (18, 19 or 21 years of age depending on the Province)
Misnomer	- an error in naming a person or place in a legal document
Mitigate	- to minimize damages suffered
Mortgage (Land)	- a type of encumbrance against land; an interest in land created by a written document providing security for the payment of a debt
Mutilate	- to disfigure; to damage
Next-of-Kin	- the closest relatives of a person who has died (i.e., those most nearly related to him by blood)
Notwithstanding	- in spite of; although
Noxious	- harmful to the health
Nuisance	- a thing or condition causing danger or annoyance to another
Obiter Dictum	- "a saying by the way"; an observation made by a judge on a legal question suggested by the case but not arising in such a manner as to require decision; not binding as a precedent

Offence	- the act of breaking the law; a crime
Onus	- burden; duty
Paramount	- chief; dominant
Per Capita	- "by heads"; distribution in equal shares of the estate of an intestate according to a number of individuals who stand in equal degree
Per Stirpes	- "by stock or branches"; distribution of the estate of an intestate among those entitled to it according to the number of stocks of descent
Permanent Improvements	- changes to property intended to be lasting and continuing (e.g., fences, buildings)
Permissive Possession	- act of a person in occupying or controlling land or objects that is allowed by the actual owner of such land or objects
Perpetuity	- continuing forever
Personal Property	- movable goods owned by a person, such as furniture, automobiles, etc.
Plaintiff	- a person who brings an action at law
Plebiscite	- a vote of the people expressing their choice for or against a proposed law or enactment submitted to them, and which, if adopted, will work a change in the constitution, or which is beyond the power of the regular legislative body
Pledge	- a delivery of goods to a creditor as security for some debt; a promise or agreement by which one binds himself to do something
Probate	- a legal certificate acknowledging the validity of the will of a deceased person; the process by which a will is proved
Proclamation	- act of causing some government matters to be published or publicly known
Prohibition	- forbidden by law or order
Putative	- reputed; generally considered or deemed such
Quash	- to annul or make void; to overturn

Quorum	- the minimum number of members required to be present at a meeting before it can validly proceed to transact business or vote
Real Property	- includes land, buildings and fixtures
Referendum	- similar to an election, but the people vote for or against a proposal printed on a ballot paper
Remuneration	- payment, such as salary or wages; compensation
Representative Action	- action brought by a member of a class (or group) of persons on behalf of himself and the other members of the class; sometimes referred to as a "class action"
Reside	- to live, dwell, abide, sojourn, stay, remain, lodge; to be settled or stationed or to dwell permanently or continuously at a place
Residue	- the remaining part of a deceased person's estate after the payment of debts, funeral and testamentary expenses, legacies and annuities
Resolution	- a formal expression of the opinion or will of an official body or council adopted by vote
Respondent	- in an appeal, the party who contends against an appeal
Resume	- taking again of lands by the original owner
Retroactive Law	- statute that creates a new obligation on transactions or considerations already past or destroys or impairs vested rights
Reversionary Interest	- "remainder" interest; right to the future enjoyment of property at present in the possession or occupation of another
Revocable	- susceptible to being cancelled, withdrawn or rescinded
Right of Execution	- a right entitling a person to carry out some act or course of conduct to its completion; entitlement to enforce a judgment debt, such as by garnishment of wages or seizure of goods
Seizure	- act of taking possession of property and removing it from the posession of another

Situs	- location
Statute	- written law of the province or country; an act of the legislature declaring, commanding or prohibiting something
Statutory	- relating to a statute, which is an act of the legislature declaring, commanding, or prohibiting something; rights, powers, or obligations arising from the written laws of the government
Stipendiary	- receiving, or performing services for, a salary
Suable Entity	- person, corporation or other body entitled to commence, maintain or defend an action in a particular court of law
Summary Conviction	- in criminal law, the conviction of a person (usually for a minor offence) as the result of his trial before a provincial or magistrate's Court without a jury
Summons	- an order commanding attendance of a person at Court
Tangible	- that which can be touched; property that can be appraised to ascertain value
Tenants-in-Common	- persons who hold the same land together under distinct titles, but with unity of possession
Tender	- an offer of money
Tenure	- the right, term, or mode of holding or occupying
Testamentary	- pertaining to a will
Testamentary Capacity	- mental ability to make a will (a person must be of sound mind and memory)
Testator/Testatrix	- a person who makes or has a will (testator if male, testatrix if female)
Tort	- a private or civil (as opposed to criminal) wrong or injury; violation of some duty owed to a person by law by another, for which the court will provide a remedy in the form of an action for damages
Trespass	- an unlawful interference with one's person, property or rights; entering upon the land of another without lawful justification

True Copy	- an exact duplicate of the original document
Ultra Vires	- acts beyond the scope of the powers of that person, corporation, legislative assembly or court
Unconscionable Contract	- a contract that no sensible person would make, unless he were under a delusion, and that no fair and honest person would accept
Undue Influence	- action in which there is present such a degree of domination and control over another's mind in the executing of documents that a person's free will is overcome and the wishes of the more dominant person are substituted
Unequivocal	- plain and clear
Unpatented Crown Lands	- lands belonging to the province or the federal government for which no title has been issued under the provincial land registration act
Usufructuary	- right of using and enjoying all the benefits of another person's property without changing or damaging its substance and without possessing legal title
Vagrancy	- shiftless or idle wandering without money or work
Vested	- settled; absolute; having the character or given the rights of absolute ownership
Violation	- breaking a law or rule
Void	- not valid; of no legal effect
Warrant	- a Court order authorizing an officer to make an arrest, seizure or search or perform some other act
Will	- a document that expresses the intention of a person as to how his property is to be disposed of when he dies; a will takes effect only on the death of its maker
Without Prejudice	- declaration that no rights or privileges are lost
Writ of Execution	- issued by the Sheriff's office; a charge on all goods and lands owned or acquired by a debtor

ABBREVIATIONS USED

REPORTS

A.P.R. Atlantic Provinces Reports, 1975 to present.
A.R. Alberta Reports, 1977 to present.
Alta. L.R. Alberta Law Reports.
Alta. L.R. (2d) Alberta Law Reports (Second Series), 1977 to present.
A.C.W.S. All-Canada Weekly Summaries.
A.C.W.S. (2d) All-Canada Weekly Summaries (Second Series), 1980 to present.
B.C.L.R. British Columbia Law Reports, 1976 to present.
B.C.R. British Columbia Reports.
B.L.R. Business Law Reports, 1977 to present.
C.A. Recueils de Jurisprudence: Cour d'Appel (Que.), 1970 to present.
C.C.C. Canadian Criminal Cases, 1893-1962.
[ ] C.C.C. Canadian Criminal Cases, 1963-1970.
C.C.C.(2d) Canadian Criminal Cases (Second Series), 1971-1983.
C.H.R.R. Canadian Human Rights Reporter, 1980 to present.
C.L.L.C. Canadian Labour Law Cases.
C.N.L.B. Canadian Native Law Bulletin, 1977-1978.
C.N.L.R. Canadian Native Law Reporter, 1978 to present.
C.P.C. Carswell's Practice Cases, 1976 to present.
C.R. Criminal Reports (Canada), 1946-67.
C.R.(3d) Criminal Reports (Third Series), 1978 to present.
C.R.N.S. Criminal Reports, New Series, 1967-1978.
[ ] C.T.C. Canada Tax Cases.
[ ] Can. L.R.B.R. Canada Labour Relations Board Reports, 1974 to present.
D.L.R. Dominion Law Reports, 1912-1922.
[ ] D.L.R. Dominion Law Reports, 1923-1955.
D.L.R.(2d) Dominion Law Reports (Second Series), 1956-1968.
D.L.R.(3d) Dominion Law Reports (Third Series), 1969 to present.
D.T.C. Dominion Tax Cases.
E.T.R. Estates and Trusts Reports, 1977 to present.
Ex. C.R. Canada Exchequer Court Reports, 1881-1922.
[ ] Ex. C.R. Canada Law Reports (Ex.Ct.), 1923-1971.
[ ] F.C. Canada Federal Court Reports, 1971 to present.
M.P.R. Maritime Provinces Reports, 1930-1968.
M.V.R. Motor Vehicle Reports, 1978 to present.
Man.R. Manitoba Reports.
Man.R.(2d) Manitoba Reports (Second Series), 1979 to present.
N.& P.E.I.R. Newfoundland & Prince Edward Island Reports, 1971 to present.
N.B.R. New Brunswick Reports, 1825-1929.
N.B.R.(2d) New Brunswick Reports (Second Series), 1969 to present.
N.R. National Reporter, 1974 to present.
N.S.R. Nova Scotia Reports, 1834-1929.
N.S.R.(2d) Nova Scotia Reports (Second Series), 1970 to present.
N.W.T. Northwest Territories Reports.

O.L.R. Ontario Law Reports, 1901-1930.
O.L.R.B.Rep. Ontario Labour Relations Board Reports, 1974 to present.
O.R. Ontario Reports, 1882-1900.
[ ] O.R. Ontario Reports, 1931-1973.
O.R.(2d) Ontario Reports (Second Series), 1974 to present.
O.W.N. Ontario Weekly Notes, 1909-1932.
[ ] O.W.N. Ontario Weekly Notes, 1933-1962.
Q.L.R. Quebec Law Reports.
[ ] Que.C.A. Quebec Official Reports (Court of Appeal), 1970 to present.
Que.K.B. Quebec Official Reports (King's Bench), 1901-1941.
[ ] Que.K.B. or Q.B. Quebec Official Reports (King's or Queen's Bench), 1942-1969.
Que.P.R. Quebec Practice Reports, 1897-1943.
[ ] Que.Q.B. Quebec Practice Reports, 1944 to present.
Que.Q.B. Quebec Official Reports (Queen's Bench), 1892-1900.
Que.S.C. Quebec Official Reports (Superior Court), 1892-1941.
[ ] Que.S.C. Quebec Official Reports (Superior Court), 1942 to present.
R.F.L. Reports of Family Law, 1971-1978.
R.F.L.(2d) Reports of Family Law (Second Series), 1978 to present.
R.J.R.Q. Quebec Revised Reports.
[ ] R.L. La Revue Légale (Que.) 1943 to present.
R.L.N.S. La Revue Légale (N.S.) (Que.), 1895-1942.
R.L.O.S. La Revue Légale (Que.) 1869-1892.
R. de D. La Revue de Droit (Que.).
R. de Jur. La Revue de Jurisprudence (Que.).
R.P. Rapports de Pratique de Quebec.
R.P.R. Real Property Reports, 1977 to present.
S.C.R. Canada's Supreme Court Reports, 1876-1922.
[ ] S.C.R. Canada Law Reports (Sup.Ct.), 1923 to present.
Sask.L.R. Saskatchewan Law Reports.
Sask.R. Saskatchewan Reports, 1979 to present.
Terr.L.R. Territories Law Reports (N.W.T.).
W.W.D. Western Weekly Digest, 1975-1976.
W.W.R. Western Weekly Reports, 1912-1916.
[ ] W.W.R. Western Weekly Reports, 1917-1950 and 1971 to present.
W.W.R.(N.S.) Western Weekly Reports, New Series, 1951-1970.

COURTS

A.D.	Appellate Division
A.- G.	Attorney General
C.A.	Court of Appeal
C.C.	County Court
D.C.	District Court
Ex.Ct.	Exchequer Court

F.C.	Federal Court
F.C.A.	Federal Court of Appeal
H.C.	High Court
K.B.	King's Bench
M.C.	Magistrate's Court
P.C.	Provincial Court
Q.B.	Queen's Bench
S.C.	Supreme Court
S.C.C.	Supreme Court of Canada
T.C.	Territorial Court
T.D.	Trial Division
T.R.B.	Tax Review Board

PROVINCES AND TERRITORIES

Alta.	Alberta
B.C.	British Columbia
Man.	Manitoba
N.B.	New Brunswick
N.S.	Nova Scotia
N.W.T.	North West Territories
Nfld.	Newfoundland
Ont.	Ontario
P.E.I.	Prince Edward Island
Que.	Quebec
Sask.	Saskatchewan
Y.T.	Yukon Territory

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2.	4, 42, 43, 44	A.-G. of Canada et al. v. Canard et al., (sub nom. Canard v. A.-G. of Canada), [1976] 1 S.C.R. 170, [1975] 3 W.W.R. 1, 4 N.R.91, 52 D.L.R.(3d) 548 (S.C.C.) - January 28, 1975 [1972] 5 W.W.R. 678, 30 D.L.R. (3d) 9 (Man.C.A.) [1972] 4 W.W.R. 618 (Man. Q.B.)
3.	12(1)	A.-G. of Canada v. Lavell; Isaac v. Bedard (sub nom. Lavell v. A.-G. of Canada) (sub nom. Bedard v. Isaac), [1974] S.C.R. 1349, (1973), 38 D.L.R. (3d) 481, 23 C.R.N.S. 197, 11 R.F.L. 333, [1972] 1 O.R. 396n (S.C.C.) - August 27, 1973 [1971] F.C. 347, 22 D.L.R. (3d) 182, 14 Crim L.Q. 236 (F.C.A.) [1972] 2 O.R. 391, (1971), 25 D.L.R. (3d) 551 (Ont.H.C.) [1972] 1 O.R. 390, (1971), 22 D.L.R. (3d) 182 (Ont.Co.Ct.)
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7.	48	Barlow v. Her Majesty the Queen, [1978] 1 A.C.W.S. 411 (F.C.T.D.) - January 25, 1978
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9.	7	Bay v. Registrar (1976), unreported (F.C.,T.D.) - May 10, 1976
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10.	48	Re Beaulieu's Adoption Petition (1969), 67 W.W.R. 669, 3 D.L.R. (3d) 479 (N.W.T., T.C.) - February 3, 1964.
11.	89	Beaulieu v. Petitpas, [1959] Que.P.R. 86 (Que.S.C.)
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15.	2(1), 87,109	Boadway v. M.N.R. (1980), 80 D.T.C. 1321, [1981] 2 C.N.L.R. 31, [1980] C.T.C. 2382 (T.R.B.) - April 16, 1980
16.	18, 34, 35	Brick Cartage Limited v. The Queen, [1965] 1 Ex. C.R. 102 (Ex. Ct.) - August 12, 1964
17.	87	Brown et al. v. The Queen in Right of B.C. et al., [1980] 3 W.W.R. 360, 107 D.L.R. (3d) 705, 1 A.C.W.S. (2d) 9, 20 B.C.L.R. 64, [1979] 3 C.N.L.R. 67 (B.C.C.A.) - December 4, 1979 87 D.L.R. (3d) 337, [1979] C.T.C. 7, [1979] 1 C.N.L.R. 101, [1978] 2 A.C.W.S. 224 (B.C.S.C.)
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19.	88, 89	Campbell v. Sandy, [1956] O.W.N. 441, 4 D.L.R. (2d) 754 (Ont.C.C.) - March 20, 1956
20.	18, 31	Canadian Pacific Ltd. v. Paul et al. (1981), 34 N.B.R. (2d) 382, [1981] 4 C.N.L.R. 39, 85 A.P.R. 382, 9 A.C.W.S. (2d) 25 (N.B.Q.B.) - April 28, 1981
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22.	88	Cardinal v. R., [1974] S.C.R. 695 (S.C.C.) - June 29, 1973
23.	2(1), 52	Children's Aid Society of Winnipeg v. Tom and one other application (1982), 13 A.C.W.S. (2d) 89, [1982] 1 C.N.L.R. 170, [1982] 2 W.W.R. 212, 132 D.L.R.(3d)187 (Man.C.A.) - January 28, 1982 [1982] 1 C.N.L.R. 160 (Man. P.C., Fam. Div.) 132 D.L.R. (3d) 187
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25.	2(1), 74, 81(h)	Davey v. Isaac (sub nom. Isaac v. Davey), [1977] 2 S.C.R. 897, 77 D.L.R. (3d) 481, 16 N.R. 29, [1977] 1 C.N.L.B. (No. 1) 8 (S.C.C.) - May 31, 1977 (1974), 5 O.R. (2d) 610, 51 D.L.R. (3d) 170 (Ont.C.A.) [1973] 3 O.R. 677, 38 D.L.R. (3d) 23 (Ont.H.C.)

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26.	12(1)	Decision on Communication No. R. 6/24, submitted by Sandra Lovelace, Human Rights Committee, United Nations (1981), unreported - July 30, 1981
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27.	11(1)	Re Derocher (1956), unreported (Sask.D.C.) - September 7, 1956
28.	88	Derriksan v. R. (sub nom. R. v. Derriksan), [1976] 6 W.W.R. 480, 16 N.R. 321, [1977] 1 C.N.L.B. (No. 1) 3, 31 C.C.C. (2d) 575, 71 D.L.R. (3d) 159 (S.C.C.) - October 19, 1976 [1975] 4 W.W.R. 761, 24 C.C.C. (2d) 101, 60 D.L.R. (3d) 140 (B.C.C.A.) [1975] 1 W.W.R. 56, 20 C.C.C. (2d) 157, 52 D.L.R. (3d) 744 (B.C.S.C.)
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29.	37-41 incl.	Dimensional Investments Limited v. R., [1968] S.C.R. 93, 64 D.L.R. (2d) 632 (S.C.C.) - October 3, 1967 [1966] Ex.C.R. 761 (Ex.Ct.)
30.	88	Director of Child Welfare for Manitoba v. B., [1979] 6 W.W.R. 229, [1981] 4 C.N.L.R. 62 (Man.P.C., Fam. Div.) - July 27, 1979
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		Enoch Decision See Case 79
31.	9	Re Findlay (1976), unreported (B.C.C.C.) - August 30, 1976
32.	88	Re Four B. Manufacturing Ltd. and United Garment Workers of America, 102 D.L.R. (3d) 385, (1979), 80 C.L.L.C. 14,006, 30 N.R. 421, [1979] 4 C.N.L.R. 21, [1980] 1 S.C.R. 1031 (S.C.C.) - December 21, 1979 (1977), 79 D.L.R. (3d) 576, 77 C.L.L.C. 14,097, 30 N.R. 421, [1977] C.N.L.B. (No. 1) 10, 17 O.R. (2d) 80 (Ont.H.C.)

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33.	2(1), 74, 81(r), 88	Francis et al. v. Canadian Labour Relations Board et al., [1982] 4 C.N.L.R. 94, (1982), 139 D.L.R. (3d) 9 (S.C.C.) - August 9, 1982 (sub nom. Re Public Service Alliance of Canada and Francis et al.) (sub nom. St. Regis Indian Band Council v. C.L.R.B. et al.) [1981] 1 F.C. 225, 33 N.R. 56, [1981] 2 C.N.L.R. 126 (F.C.A.) - May 30, 1980
34.	87, 89	Francis v. The Queen, [1956] S.C.R. 618, 3 D.L.R. (2d) 641, 10 D.T.C. 1077 (S.C.C.) - June 11, 1956 [1954] Ex. C.R. 590, [1955] 4 D.L.R. 760, 9 D.T.C. 1034 (Ex.Ct.)
35.	11(1)	Re Froman, [1973] 2 O.R. 360, 12 R.F.L. 237, 33 D.L.R. (3d) 676 (Ont.C.C.) - February 15, 1973
36.	88	Gabriel v. Curotte (1977), unreported (Que.S.C.) - March 3, 1977
37.	12(1)	Re Gaisson, [1982] 2 C.N.L.R. 66, [1979] C.S. 1089 (Que.S.C.) - October 31, 1979
38.	88, 89	Geoffries v. Williams (alias Well) (1958), 26 W.W.R. 323, 16 D.L.R. (2d) 157 (B.C.C.C.) - September 16, 1958
		George See Case 91
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39.	2(1), 87	Grammount Motel Ltd. v. Municipality of Mann (1977), unreported (Que.S.C.) - December 1, 1977
40.	87, 89, 90	Greyeyes v. The Queen (1978), 84 D.L.R. (3d) 196, [1978] 2 F.C. 385, [1978] C.T.C. 91, 78 D.T.C. 6043, [1978] 1 A.C.W.S. 410, [1978] 1 C.N.L.B. (No. 4) 47 (F.C.,T.D.) - January 19, 1978
41.	18, 37, 38, 39, 53	Guerin et al. v. R. (1983), 143 D.L.R.(3d) 416, [1983] 1 C.N.L.R. 20, 13 E.T.R. 245, (1982), 17 A.C.W.S. (2d) 389, [1983] 2 W.W.R. 686 (F.C.A.) - December 10, 1982, allowing appeal from 10 E.T.R. 61, 10 A.C.W.S. (2d) 11, and dismissing cross-appeal from (1981), 127 D.L.R. (3d) 170, [1982] 2 C.N.L.R. 83, 10 A.C.W.S. (2d) 214 (F.C.,T.D.) - July 3, 1981

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42.	2(1)	Town of Hay River v. The Queen (1979), 101 D.L.R. (3d) 184, [1980] 1 F.C. 262, [1979] 2 C.N.L.R. 101 (F.C.,T.D.) - May 4, 1979
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43.	18,20, 24,25, 88,89	Re Hopkins and Hopkins, 111 D.L.R. (3d) 722, 3 A.C.W.S. (2d) 434, (1980), 29 O.R. (2d) 24, [1981] 3 C.N.L.R. 51, 18 R.F.L. (2d) 264 (Ont.C.C.) - May 30, 1980
		Isaac [1973] See Case 94
		Isaac [1976] See Case 95
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44.	12(1)	Re Jock, [1980] 2 C.N.L.R. 75 (Ont.C.C.) - February 29, 1980
		Joe (1969) See Case 97
45.	18,20, 31,37, 81(g)	Joe v. Findlay, [1981] 3 W.W.R. 60, [1981] 3 C.N.L.R. 58, 122 D.L.R. (3d) 377, 26 B.C.L.R. 376 (B.C.C.A.) - March 9, 1981 [1980] 5 W.W.R. 121, 109 D.L.R. (3d) 747, [1981] 2 C.N.L.R. 58 (B.C.S.C.)
		Johns (1962) See Case 98
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46.	2(1) 31	Johnson v. B.C. Hydro & Power Authority (1981), 16 C.C.L.T. 10, 27 B.C.L.R. 50, [1981] 3 C.N.L.R. 63, 123 D.L.R. (3d) 340 (B.C.S.C.) - March 10, 1981
		Johnston See Case 100

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47.	48	Re Katie's Adoption Petition (1962), 38 W.W.R. 100, (1962), 32 D.L.R. (2d) 686, 38 W.W.R. 100 (N.W.T.T.C.) - October 16, 1961
48.	2(1), 87	Kinookimaw Beach Association v. R. in Right of Saskatchewan, [1979] 6 W.W.R. 84, 102 D.L.R. (3d) 333, [1979] 4 C.N.L.R. 101 (Sask.C.A.) - June 28, 1979 Leave to appeal to S.C.C. refused (1979), 1 Sask.R. 179n, 30 N.R. 267n (S.C.C.) (sub nom. Re Kinookimaw Beach Association and Board of Revenue Commissioners), [1978] 6 W.W.R. 749, 91 D.L.R. (3d) 698, [1979] 1 C.N.L.R. 61 (Sask.Q.B.)
49.	88	Kruger and Manuel v. R. (sub nom. R. v. Kruger), [1978] 1 S.C.R. 104, [1977] 4 W.W.R. 300, 75 D.L.R. (3d) 434, 15 N.R. 495, 34 C.C.C. (2d) 377, [1977] 1 C.N.L.B. (No. 1) 6 (S.C.C.) - May 31, 1977 [1975] 5 W.W.R. 167, 24 C.C.C. (2d) 120, 60 D.L.R. (3d) 144 (B.C.C.A.) [1974] 6 W.W.R. 206, 19 C.C.C. (2d) 162, 51 D.L.R. (3d) 435 (B.C.C.C.)
50.	87,89, 90	Kuhn v. Starr, [1978] C.N.L.B. (No. 4) 89 (Man. Q.B.) - October 28, 1976
51.	81(g)	La Reine et conseil de la bande des Mohawk de Kanawake c. Rice, [1981] 1 C.N.L.R. 71 (Que.C.A.) - September 5, 1980
		Laprise See Case 101
52.	2(1), 20,35	Lazare v. St. Lawrence Seaway Authority, [1957] Que.S.C. 5 (Que.S.C.) - October 24, 1956
53.	2(1), 2(3), 20,24, 60	Leonard et al. v. Gottfriedson (1980), 21 B.C.L.R. 326, [1980] B.C.D. Civ. 1863-02, 3 A.C.W.S. (2d) 249, [1982] 1 C.N.L.R. 60 (B.C.S.C.) - April 23, 1980
54.	20	Leonard v. Kamloops Indian Band, [1978] B.C.D. Civ. (B.C.C.C.) - October 30, 1978

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55.	2(1), 2(3), 20,24, 26,27	Lindley v. Derrikson, [1976] B.C.D. Civ., [1978] C.N.L.B. (No.4) 75 (B.C.S.C.) - March 29, 1976
56.	39, 74	Logan v. Styres (sub nom. Logan v. A.-G. of Canada), [1959] O.W.N. 361, 20 D.L.R. (2d) 416 (Ont.H.C.) - September 3, 1959
		Lonethunder See Case 102
		Lovelace See Case 26
57.	88	Re Manitoba Hospital Commission and Klein (1969), 9 D.L.R. (3d) 423, 70 W.W.R. 79 (Man.C.A.) - October 2, 1969 (1969), 67 W.W.R. 440, 4 D.L.R. (3d) 522 (Man.Q.B.)
58.	11(1), 68	Re Martin and Chapman et al., [1980] 1 F.C. 72, [1981] 2 C.N.L.R. 78, 14 R.F.L. (2d) 15, 107 D.L.R. (3d) 698 (F.C.,T.D.) - November 28, 1979
59.	81(r)	Re Masset Band Council and Attorney-General of B.C., [1977] 2 W.W.R. 93, 73 D.L.R. (3d) 154, [1977] 1 C.N.L.B. (No. 1) 21 (B.C.S.C.) - December 8, 1976
60.	20, 31, 81(g)	Mathias v. Findlay (Joe v. Findlay), [1978] 4 W.W.R. 653, 87 D.L.R. (3d) 239, [1978] 1 C.N.L.B. (No. 4) 130 (B.C.S.C., Chambers) - April 27, 1978
		McLeod See Case 103
61.	2(1), 28, 31, 88	Millbrook Indian Band v. Northern Counties Residential Tenancies Board (sub nom. Re A.-G. of Nova Scotia and Millbrook Indian Band et al.) (1978), 93 D.L.R. (3d) 230, [1978] 2 A.C.W.S. 465, (1978), 28 N.S.R. (2d) 268, 43 A.P.R. 268, [1979] 4 C.N.L.R. 59 (N.S.S.C., A.D.) - June 7, 1978 3 R.P.R. 199, 84 D.L.R. (3d) 174, [1978] C.N.L.B. (No. 4) 34 (N.S.S.C., T.D.)
62.	88	Re Milloy, [1884] O.R. 573

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63.	9	Minister of Indian Affairs and Northern Development v. Ranville et al. (1983), 139 D.L.R. (3d) 1, 16 A.C.W.S. (2d) 112 (S.C.C.) - September 28, 1982 (1980), 4 A.C.W.S. (2d) 2, [1982] 1 F.C. 485, [1982] 4 C.N.L.R. 80 (F.C.A.) - June 5, 1980 Re Ranville et al. and A.-G. of Canada, [1979] 3 A.C.W.S. 254, (1979), 26 O.R. (2d) 721, (1979), 103 D.L.R. (3d) 760, (1979), 11 R.F.L. (2d) 193, [1979] 4 C.N.L.R. 65 (Ont. C.C.)
64.	87	M.N.R. v. Iroquois of Caughnawaga, [1977] 2 F.C. 269, [1977] C.T.C. 49, 73 D.L.R. (3d) 414, 15 N.R. 377, 15 N.S.R. 377, 77 D.T.C. 5127, [1977], A.C.W.S. 219, [1977] 1 C.N.L.B. (No. 1) 15 (F.C.A.) - January 21, 1977
65.	2(1), 58	Mintuck v. Valley River Band No. 63A et al., [1977] 2 W.W.R. 309, 2 C.C.L.T. 1, 75 D.L.R. (3d) 589 [1977] 1 C.N.L.B. (No. 1) 12 (Man.C.A.) - February 10, 1977 [1976] 4 W.W.R. 543 (Man.Q.B.)
66.	2(1), 89, 90	Mintuck v. Valley River Band No. 63A et al., [1978] 2 W.W.R. 159, 83 D.L.R. (3d) 324, [1978] 1 A.C.W.S. 89, [1978] 1 C.N.L.B. (No. 2) 13 (Man. Q.B.) - December 12, 1977
		Morley See case 104
67.	12(2)	Re Moses (1962), unreported (Ont.C.C.) - May 30, 1962
68.	31, 35, 37, 53	Moses v. R., [1979] B.C.D. Civ. 1863-01, [1979] 5 W.W.R. 100, 12 B.C.L.R. 308, [1979] 4 C.N.L.R. 61 (B.C.C.A.) - May 15, 1979 [1977] 4 W.W.R. 474, (1977), 2 A.C.W.S. 237, [1977] 1 C.N.L.B. (No. 1) 17 (B.C.S.C.)
		National Indian Brotherhood See Case 105
69.	2(1), 11(1), 88	Natural Parents v. Superintendent of Child Welfare (sub nom. Re Adoption Act) (sub nom. Re Birth Registration No. 67-09-022272), [1976] 1 W.W.R. 660, (1975), 60 D.L.R. (3d) 148, 21 R.F.L. 267, [1976] 2 S.C.R. 751, 6 N.R. 491 (S.C.C.) - October 7, 1975 [1974] 3 W.W.R. 363, 14 R.F.L. 396, 44 D.L.R. (3d) 718 (B.C.C.A.) [1974] 1 W.W.R. 19, (1973), 13 R.F.L. 244 (B.C.S.C.)

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70.	2(1), 48, 88	*Nelson* v. *Children's Aid Society of Eastern Man.*, [1975] 5 W.W.R. 45, 56 D.L.R. (3d) 567, 21 R.F.L. 222 (Man.C.A.) - April 2, 1975 [1974] 5 W.W.R. 449, 46 D.L.R. (3d) 633, 18 R.F.L. 290 (Man.Q.B.)
		Noweijick See Case 106
71.	12(1)	*Re O'Bomsawin*, [1981] 4 C.N.L.R. 76 (Que.S.C.) - March 17, 1980
72.	2(1), 55	*Palm Dairies Ltd.* v. *R.*, [1979] 1 F.C. 531, 91 D.L.R. (3d) 665, [1979] 2 C.N.L.R. 43 (F.C.,T.D.) - September 27, 1978
73.	60, 88	*Re Park Mobile Homes Sales Ltd. and Le Greely* (*sub nom.* *Re Landlord and Tenant Act: Park Mobile Home Sales Ltd. v. Le Greely*) (1978), 85 D.L.R. (3d) 618, [1978] C.N.L.B. (No. 4) 31 (B.C.C.A.) - March 6, 1978 [1978] C.N.L.B. (No.4) 25 (B.C.C.C.)
74.	2(1)	*Re Park Realty Ltd. and Mentuck et al.* (1981), 10 A.C.W.S. (2d) 68, [1982] 3 C.N.L.R. 50 (Man.C.C.) - June 10, 1981
75.	18	*The Pas Merchants Ltd.* v. *The Queen*, [1974] 2 F.C. 376, 50 D.L.R. (3d) 154 (F.C.,T.D.) - September 4, 1974
		Pawis See Case 107
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76.	64	*Peterson Livestock Ltd.* v. *Fox et al.* [1982], 2 C.N.L.R. 58, [1982] 2 W.W.R. 204, (1982), 12 A.C.W.S. (2d) 497 (Alta.C.A.) - January 12, 1982
		Picard See Case 109
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77.	2(1)	Pratt v. Sproxton et al. (1977), 6 C.P.C. 121, (1977), 2 A.C.W.S. 694 (Sask.Q.B.) - September 12, 1977
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78.	58, 87,88	Prov. Municipal Assessor v. Rural Mun. of Harrison, [1971] 3 W.W.R. 735, 20 D.L.R. (3d) 208 (Man. Q.B.) - March 30, 1971
79.	2(1), 36,37, 38,41, 53,88	Re Questions set out in O.C. 499/80, amended by O.C. 1049/80, concerning a proposed development of land on the Stoney Plain Indian Reserve #135, [1982] 1 W.W.R. 302, [1982] 1 C.N.L.R. 133, 35 A.R. 412, 130 D.L.R.(3d) 636 (Alta.C.A.) - November 19, 1981 (Enoch Decision) (sub nom. Re Stoney Plain Indian Reserve #135)
		Ranville See Case 63
79.1	114- 123	R. v. B. (1982), 135 D.L.R. (3d) 285, (1982), 66 C.C.C. (2d) 359, [1982] 3 C.N.L.R. 151 (Ont.P.C., Fam. Div.) - February 19, 1982
80.	88	R. v. Baert Construction (1974), 19 C.C.C. (2d) 304 (Man. C.A.) - October 21, 1974
81.	88	R. v. Batisse (1978), 84 D.L.R. (3d) 377, 19 O.R. (2d) 145, 40 C.C.C. (2d) 34, [1978] 1 C.N.L.B. (No. 2) 15 (Ont.D.C.) - March 9, 1978
82.	81(h), 82,86	R. v. Bear (1981), 35 N.B.R. (2d) 181, 88 A.P.R. 181, [1982] 3 C.N.L.R. 78 (N.B.Q.B.) - April 28, 1981
83.	73(1) (c)	R. v. Bigeagle, [1978] 6 W.W.R. 65, 43 C.C.C. (2d) 528, [1978] 1 C.N.L.B. (No. 4) 57 (Sask. C.A.) - July 20, 1978 [1978] 1 W.W.R. 368, [1978] 1 C.N.L.B. (No. 2) 11 (Sask. D.C.)
84.	110	R. v. Budd; R. v. Crane, [1979] 6 W.W.R. 450, [1981] 4 C.N.L.R. 120, [1979] Sask.D. Crim. Conv. 5515-02 (Sask.Q.B.) - August 2, 1979
85.	2(1)	R. v. Cochrane, [1977] 3 W.W.R. 660 (Man.C.C.) - March 11, 1977

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86.	30, 31, 106	R. v. *Crosby* (1980), 54 C.C.C. (2d) 497, [1982] 1 C.N.L.R. 102 (Ont.C.A.) - August 1, 1980 [1980] Ont. D. Crim. Conv. 5686-01 (Ont.S.C.)
87.	88	R. v. *Daniels and White*, [1968] S.C.R. 517, 2 D.L.R. (3d) 1 (S.C.C.) - April 29, 1968
88.	73(1) (c)	R. v. *Deer* (1974), unreported (Quebec Court of Sessions of the Peace) - December 19, 1974
89.	20,28, 31,50, 58	R. v. *Devereux*, [1965] S.C.R. 567, [1965] 5 C.R. 567, 51 D.L.R. (2d) 546 (S.C.C.) - April 6, 1965 [1965] 1 Ex. C.R. 602 (Ex.Ct.)
90.	94- 102 incl.	R. v. *Drybones*, [1970] S.C.R. 282, (1969), 9 D.L.R. (3d) 473, 71 W.W.R. 161, 10 C.R.N.S. 334, [1970] 3 C.C.C. 355 (S.C.C.) - November 20, 1969 [1968] 2 C.C.C. 69, (1967), 61 W.W.R. 370, 64 D.L.R. (2d) 260 (N.W.T.C.A.) (1967), 60 W.W.R. 321 (N.W.T.T.C.)
91.	88	R. v. *George* (*sub nom.* *A.-G. of Canada* v. *George*), [1966] S.C.R. 267, 55 D.L.R. (2d) 386, 47 C.R. 382, [1966] 4 C.C.C. 137 (S.C.C.) - January 25, 1966 [1964] 2 O.R. 429, 45 D.L.R. (2d) 709, [1965] 2 C.C.C. 148 (Ont.C.A.) [1964] 1 O.R. 24, (1963), 41 D.L.R. (2d) 31, [1963] 3 C.C.C. 109 (Ont.H.C.)
92.	30, 81(p)	R. v. *Gingrich* (1958), 29 W.W.R. 471, 31 C.R. 306, 122 C.C.C. 279 (Alta. C.A.) - November 28, 1958
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94.	73(1) (c)	R. v. *Isaac*, [1973] 3 O.R. 833, 38 D.L.R. (3d) 349, 14 C.C.C. 374 (Ont.C.A.) - June 21, 1973
95.	88	R. v. *Isaac*, [1976] 13 N.S.R. (2d) 460, 9 A.P.R. 460, [1978] 1 C.N.L.B. (No. 3) 14 (N.S.S.C.,A.D.) - November 19, 1975

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96.	88	R. v. Jim, [1915] 26 C.C.C. 236 (B.C.S.C.) - April 27, 1915
97.	73(1) (c)	R. v. Joe (1969), unreported (B.C.C.A.)
98.	73(1) (c)	R. v. Johns (1962), 39 W.W.R. 49, 38 C.R. 148, 133 C.C.C. 43 (Sask.C.A.) - April 16, 1962
99.	73(1) (c)	R. v. Johns (1963), 45 W.W.R. 65 (Sask. D.C.) - October 16, 1963
100.	87	R. v. Johnston, 56 D.L.R. (2d) 749 (Sask.C.A.) - March 17, 1966
101.	2(1), 110	R. v. Laprise, [1978] 6 W.W.R. 85, [1978] 1 C.N.L.B. (No. 4) 118 (Sask.C.A.) - July 20, 1978 [1977] 3 W.W.R. 379, [1977] 1 C.N.L.B. (No. 1) 14 (Sask.Q.B.)
102.	2(1)	R. v. Lonethunder, [1979] 4 C.N.L.R. 109 (Sask.P.C.) - September 5, 1979
103.	88	R. v. McLeod, [1930] 2 W.W.R. 37 (B.C.C.C.) - April 23, 1930
104.	88	R. v. Morley, [1931] 4 D.L.R. 483 (B.C.C.A.) - October 6, 1931
105.	87, 89, 90	The Queen v. National Indian Brotherhood (sub nom. National Indian Brotherhood v. M.N.R.), 92 D.L.R. (3d) 333, [1979] 1 F.C. 103, [1978] 3 A.C.W.S. 293, [1978] C.N.L.B. (No. 4) 107, [1978] C.T.C. 680, 78 D.T.C. 6488 (F.C.,T.D.) - October 16, 1978 [1978] C.N.L.B. (No.4) 99, [1975] C.T.C. 2112, 29 D.T.C. 110 (T.R.B.)
106.	87	The Queen v. Nowegijick (1983), 18 A.C.W.S. (2d) 2, [1983] 2 C.N.L.R. 89, 144 D.L.R.(3d) 193 (S.C.C.) - January 25, 1983 [1980] 1 F.C. 462, [1979] 3 A.C.W.S. 652, [1979] 3 A.C.W.S. 458, 79 D.T.C. 5354, [1981] 2 C.N.L.R. 146 (F.C.A.) - September 26, 1979 (sub nom. Nowegijick v. The Queen), [1979] 2 F.C. 228, [1979] 2 A.C.W.S. 23, [1979] C.T.C. 195, [1979] 2 C.N.L.R. 82, 79 D.T.C. 5115 (F.C.,T.D.)

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109.	73(1) (c)	R. v. Picard (1974), unreported (Que.Q.B.) - February 21, 1974
110.	87	R. v. Point (No.2) (1957), 22 W.W.R. 527 (B.C.C.A.) - June 28, 1957
111.	2(1), 110	R. v. Pritchard, 32 D.L.R. (3d) 617, (1972), 9 C.C.C. (2d) 488 (Sask.D.C.) - October 23, 1972
112.	88	R. v. Rodgers, [1923] 3 D.L.R. 414 (Man. C.A.) - April 16, 1923
113.	73 (1)(a), 81(o)	R. v. Sacobie (1980), 30 N.B.R. (2d) 70, 70 A.P.R. 70, [1981] 2 C.N.L.R. 115 (N.B.Q.B., T.D.) - April 28, 1980
114.	73 (1)(a), 81(o)	R. v. Saulis (1980), 30 N.B.R. (2d) 146, 70 A.P.R. 146, [1981] 2 C.N.L.R. 121 (N.B.Q.B.,T.D.) - May 9, 1980
115.	18,20, 31, 81(p)	R. v. Sellars, [1977] 3 W.W.R. 639, [1977] 1 C.N.L.B. (No. 1) 20 (B.C.P.C.) - February 18, 1977
116.	87	R. v. Simon, [1979] 34 N.S.R. (2d) 416, [1980] 2 C.N.L.R. 90, 59 A.P.R. 416 (N.S.C.C.) - May 4, 1977
117.	88	R. v. Sinclair, [1978] 6 W.W.R. 37, [1978] 1 C.N.L.B. (No. 4) 150 (Man.P.C.) - June 15, 1978
118.	2(1), 31, 53	The Queen v. Smith (1980), 113 D.L.R. (3d) 522, [1980] 4 C.N.L.R. 29, 4 A.C.W.S. (2d) 106, 34 N.R. 91, [1981] 1 F.C. 346 (F.C.A.) - June 24, 1980 [1978] 1 F.C. 653, 2 A.C.W.S. 694, [1978] 1 C.N.L.B. (No. 4) 121 (F.C.,T.D.)

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120.	73 (1)(c)	*R.* v. *Sport* (1971), 3 C.C.C. (2d) 477 (B.C.C.C.) - June 9, 1971
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